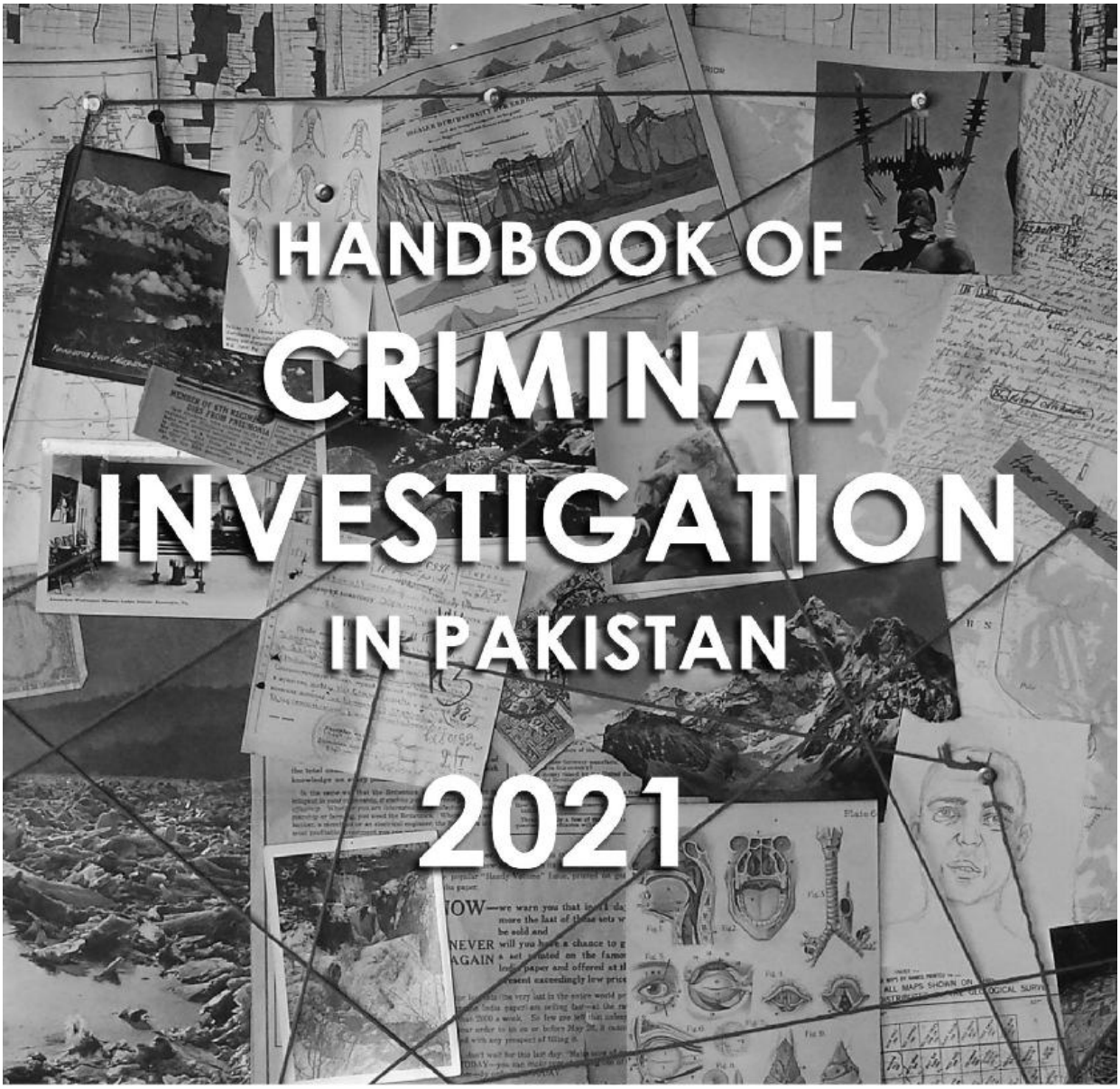

National Police Bureau

Ministry of Interior
Government of Pakistan

HANDBOOK OF CRIMINAL

INVESTIGATION IN PAKISTAN

National Police Bureau

Ministry of Interior

Government of Pakistan

Director General's Message

Criminal Investigation is the be-all and end-all of policing as far as the role of police department as a part of Criminal Justice System is concerned. After the registration of First Information Report by the police, the Criminal Justice System comes into play. Most important part of the system is the process of police investigation, which mostly determines the outcome of the case in the courts in providing justice to the victims of crime, their families and the offenders too. Majority of criminal cases fail in courts because of defective investigation as the courts have repeatedly commented on the poor quality of investigation as responsible for failure of Criminal Justice System as a whole.

In his order dated 12.05.2020 in Criminal Petition No. 419 of 2020 (Saddam Hussain vs The State) his lordship the Hon'ble Chief Justice of Pakistan,

issued a direction to the Inspector General of Police, Islamabad Capital Territory (ICT) to compile a Handbook of Investigation for the guidance of the Investigation Officers (IO). In a meeting of Police Reforms Committee at National Police Bureau, Secretary Law and Justice Commission also conveyed that the Hon'ble Chief Justice desired that proper check-lists of investigation process and also a brief on the ingredients of offences may be added in the Handbook, to properly guide the IOs.

Although the original direction was issued to the IG (ICT), National Police Bureau volunteered to compile the Handbook as it was an issue concerning all the police/law enforcement agencies in the county, for which the Bureau is a coordinating agency. Therefore, this Handbook is a product of the effort of all the police departments concerned with investigation.

The NPB is thankful to all the contributors of this exercise at national levels and especially, the organizations who provided academic and financial support for its publication for wider circulation to the end-users i.e. Investigation Officers. After performing this tremendous job, the NPB is working on a system of accreditation of Investigation Officers and also translation of the Handbook in Urdu.

Dr. Syed Ejaz Hussain PSP, PhD,

Director General, National Police Bureau

Chairman, Working Group on the Handbook of Criminal

Investigation in Pakistan

Foreword

In compliance of the orders of the Hon'ble Supreme Court of Pakistan, National Police Bureau (NPB) voluntarily took up the task of compiling a national handbook of criminal investigation in collaboration with all the federal and provincial criminal investigation agencies of Pakistan. The purpose of this endeavour was to document national standards of investigation by introducing a national reference book on criminal investigation, which may be used by the criminal investigation agencies across the country to ensure uniformity in the quality of procedures and standards of criminal investigation.

In the process of research, NPB collected and perused all the available investigation booklets and manuals prepared by the local criminal investigation agencies and training institutes. It was observed that different investigation agencies have developed different investigation manuals according to their needs and capabilities. A comprehensive reference book on the subject comprising of the latest case law and modern investigation techniques could not be found. It was decided to avoid duplication of efforts by having a common platform comprising of experts from all the criminal investigation agencies of the country and the legal fraternity to produce a national handbook of criminal investigation which could be treated by investigation officers across the country as a reference book to seek guidance in matters of criminal investigation.

Therefore, a national working group under the umbrella of NPB, comprising of experts from all provincial police organizations, FIA, NACTA, NAB, Advocate General Islamabad, ANF and prominent legal experts was created to carry out the task. The working group conducted several meetings and

workshops to reach a consensus on the contents, style and sequence of the handbook. Different chapters were assigned to different organizations according to their expertise and capacity while NPB took up the tasks of overall coordination, editing and compilation. The drafts prepared by different organizations were reviewed by professional investigators and legal experts. After detailed deliberations and consultations, the working group has produced this handbook which wil be published online and on paper in both Urdu and English languages. Moreover, a smartphone app and an e-portal will also be developed in due course of time to incorporate the contents of the Handbook in a ready reference form. As directed by the Hon'ble Supreme Court, this handbook will be revised on yearly basis to incorporate new case law and latest developments in the methods and tools of criminal investigation.

This book is a result of the concerted efforts of all the criminal investigation agencies of Pakistan and prominent legal experts. NPB is grateful to the members of the working group and their respective organizations for their support, hard work and team play. A good investigation is by the book. We hope that this book will find its due place in the hearts, hands and minds of the investigators of today and tomorrow.

Saqib Sultan Al Mehmood PPM, PSP

Director, National Police Bureau

Coordinator, Working Group on the Handbook of

Criminal Investigation in Pakistan

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INTRODUCTION

The investigation process is the foundation upon which the edifice of criminal justice is erected. Effective investigations hold offenders accountable, bring solace and closure to victims or their heirs, deter future offenders, enhance peace and stability, improve a State's standing in the international community, and, most importantly, inculcate a sense of justice in society. The primary criminal investigative function rests with the Police force of any State, it is an onerous responsibility, taxing on its officers, and dangerous in its application, yet the Police in Pakistan continue to perform their functions with dedication. Numerous sacrifices have been made by the Pakistan Police along the way but these wil not serve to deter us from our duties. Since these duties are owed to the people of Pakistan, the Constitution of this Islamic Republic, and most importantly, to Allah Almighty, our sacrifices wil never go in vain.

The criminal investigation process is an ever-evolving endeavor and requires consistent improvement in technique, know-how, and capacities. It is for this reason that under directions from the Honorable Supreme Court of Pakistan, the various Provincial Police Services and other Police bodies with coordination from the National Police Bureau and expert services from leading professionals, have come together to develop this detailed Handbook on Criminal Investigation. This Handbook has been prepared as a practical guide to investigators in a variety of situations. It covers al the major aspects of criminal investigation ordinarily undertaken by Police officers in Pakistan. These include the initiation of an investigation, visiting the crime scene, managing the crime scene and gathering evidence from it, ensuring medical examinations or post-mortems, obtaining witness statements, conducting searches, making arrests, applying for remand of suspects, interrogating suspects, recording confessions, undertaking identification parades, analyzing al types of evidence, preparing key documentation

especial y the final police report, engaging with prosecutors, among numerous other issues.

The Handbook is structured upon self-contained chapters for ease of reference. The content of each chapter looks to distil the most relevant aspects of the topic. Each chapter looks at the statutory provisions governing it such as the Code of Criminal Procedure 1898, the Qanun-e-Shahadat Order 1984, and the Anti-Terrorism Act 1997 among various others. Additional y, key provisions of the Police Rules 1934 are inserted wherever they provide guidance on a matter. Importantly, the jurisprudence developed by the superior judiciary of Pakistan has been included throughout this handbook to provide guidance to investigators of the standards applied by the judiciary. This case law has been incorporated after reviewing hundreds of judgements and retaining only the most relevant.

Pursuant to the Honorable Supreme Court of Pakistan's directions, this Handbook wil be annual y revised and updated to include a broader set of topics as wel as examine subjects in more depth. We are confident that this first edition Handbook on Criminal Investigation in Pakistan wil be invaluable to investigators across the country.

CHAPTER 1: OVERVIEW OF THE CRIMINAL

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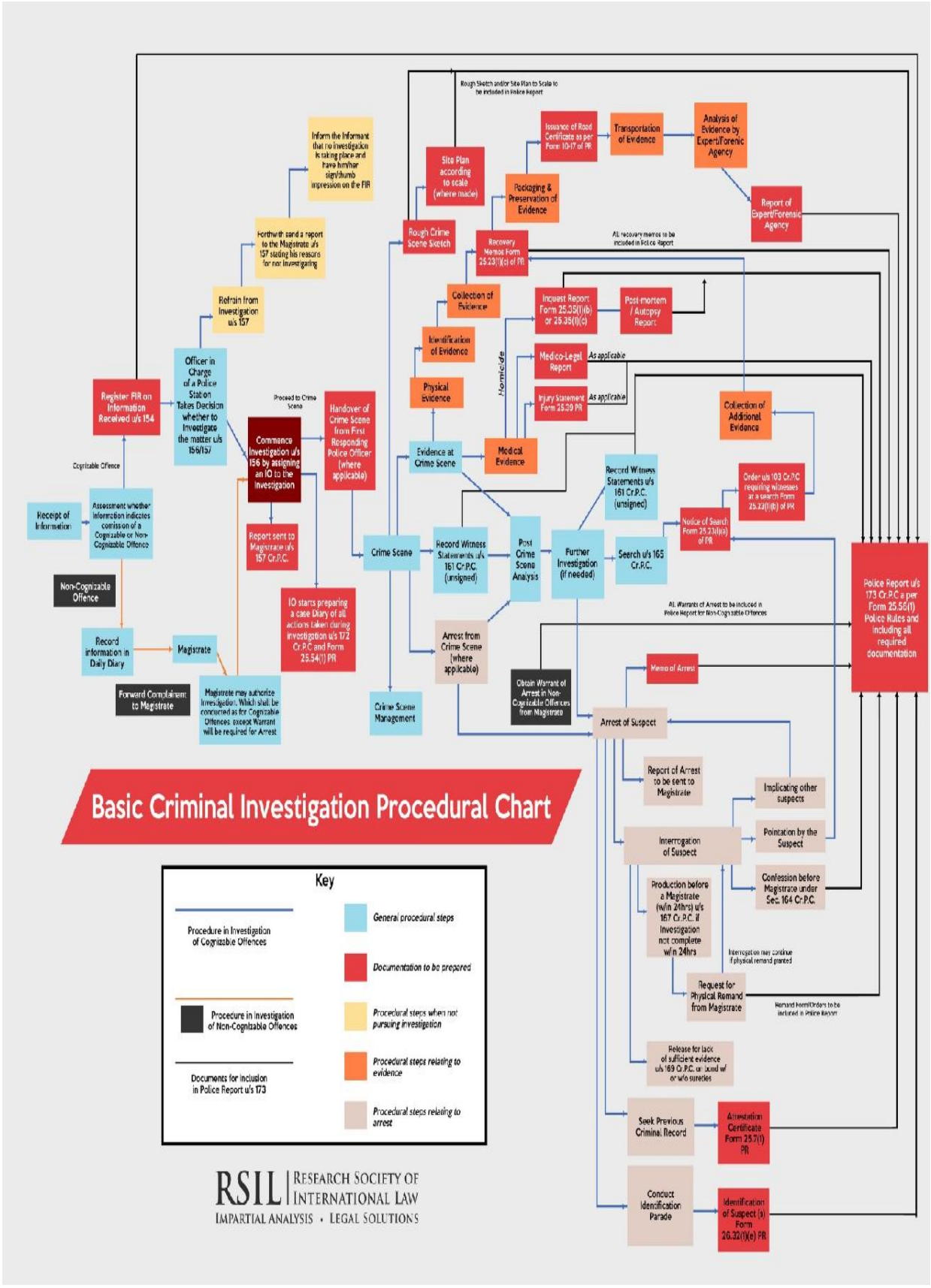
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Key
Procedure in Investigation of Cognizable Offences
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Documents for Inclusion in Police Report u/s 173
General procedural steps
Documentation to be prepared
Procedural steps when not pursuing investigation
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Procedural steps relating to arrest
Rough Sketch and/or Site Plan to Scale to be included in Police Report
Inform the Informant that no investigation is taking place and have him/her sign/thumb impression on the FIR
Forthwith send a report to the Magistrate u/s 157 stating his reasons for not investigating
Refrain from Investigation u/s 157
Site Plan according to scale (where made)
Issuance of Road Certificate as per Form 10-17 of PR
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Non-Cognizable Offence
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All Warrants of Arrest to be included in Police Report for Non-Cognizable Offences
Record information in Daily Diary
Magistrate
Arrest from Crime Scene (where applicable)
Memo of Arrest
Forward Complainant to Magistrate
Magistrate may authorize Investigation. Which shall be conducted as for Cognizable Offences except Warrant will be required for Arrest
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Obtain Warrant of Arrest in Non-Cognizable Offences from Magistrate
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OVERVIEW

The Criminal Investigation Process can at times seem dauntingly complex. However, it fol ows a logical method aimed at uncovering the truth and documenting the investigators path to reaching it. The attached Chart outlines the various steps involved in a basic investigation. Not al steps outlined in the chart wil have to be fol owed in every investigation and specialized investigations may have somewhat different procedures, however, in general the process outlined is how investigations ought to be conducted.

1. START OF AN INVESTIGATION

1. Receipt of Information concerning an Offence

• At the first step an informant or complainant provides the information to the Police.

• This information is then assessed by the concerned Police officer regarding:

i. Whether an offence has actual y taken place

i . Whether the al eged offence is cognizable or non-cognizable under the law

2. Registration of an FIR in Cognizable Offences

• If the Police determine that an offence has taken place and is cognizable then they shal register an FIR under Sec. 154 of the Cr.P.C.

• It is mandatory to register such an FIR in al cases concerning cognizable offences and the Police cannot refuse to register an FIR in such situations. 1

• If the Police determine that no offence has taken place, they are not bound to register an FIR. 2

3. Refraining or Delaying an Investigation after Registration of an FIR in Cognizable cases

• Not al FIR’s have to be investigated. The Police are given some discretion not to immediately commence an investigation and also to refrain altogether from conducting an investigation in cognizable offences under Sec. 157 of the Cr.P.C. The conditions in which an Officer-in-Charge of a Police Station may dispense with an investigation or delay it are:

i.

In cases which are not of a serious nature

i . If it appears there is no sufficient ground for entering on an investigation

• These powers are, however, to be used sparingly and it is not advised to delay or not conduct an investigation of an offence.

• Where investigation is dispensed with the Officer-in-Charge of the Police Station wil forthwith send a report to the Magistrate under Sec. 157 indicating his/her reasons for not investigating the case.

• The Officer wil also inform the informant giving the information that no investigation is taking place and where the informant is present at the Police Station, wil have him/her sign or make a thumb impression on the FIR.

4. Commencing an Investigation after Registration of an FIR in Cognizable cases

• In cognizable cases the Police is empowered to commence an investigation under Sec. 156 Cr.P.C. when an FIR has been registered.

1 PLD 1975 Lahore 733

2 PLD 1988 Lahore 741

3

• The Police officer wil forthwith send a report to the Magistrate under Sec. 157 Cr.P.C. and shal proceed personal y or depute a subordinate officer to the spot to investigate the facts and circumstances.

• The officer investigating an offence wil at al times maintain a case diary under Sec. 172 Cr.P.C. in Form 25.54(1) of the Police Rules noting al actions taken with regard to the investigation.

5. Procedure in Non-Cognizable Cases

• When the Officer-in-Charge of a Police Station determines that the information received by him/her concerns the commission of non-cognizable offence, he/she shal record the information in the Daily Dairy maintained by the Police Station under Sec. 155 Cr.P.C.

• He/She wil then forward the complainant to the Magistrate as per Sec. 155 Cr.P.C.

• The Magistrate may authorize the Police to conduct an investigation under Sec. 155 Cr.P.C.

• Once the Police are authorized by a Magistrate to commence an investigation in a non-cognizable case, they have the same powers of investigation as apply for cognizable offences (except in relation to arrest – a warrant of arrest wil be required by a Magistrate).

2. INVESTIGATION AT THE CRIME SCENE

6. Crime Scene

• The IO arriving at the Crime Scene wil be handed over the crime scene from the First Responding Police Officer, if any, and wil be briefed on the situation by him/her, the steps taken thus far to preserve the crime scene, and wil share any documentation relating to the crime.

• At the Crime Scene the IO wil make an initial assessment and undertake Crime Scene Management protocols involving:

Assessing the situation,

Establishing a perimeter (inner layer, outer layer, traffic management layer)

Making arrests if necessary,

Arranging for medical treatment of victims and/or the evacuation of victims, if any,

Removing unauthorized personnel from the scene

Cordoning off the crime scene,

Conduct a security sweep (through Bomb Disposal Unit, if required)

Identifying and Searching for Evidence

Col ecting Evidence

Send evidence to the relevant Expert/Forensic Agency for analysis

Recording Witness Statements

Making a Site Plan

• Once the Crime Scene is processed the IO should conduct a Post-Crime Scene Analysis to assess the state of the investigation and what further investigation ought to take place, if any.

3. SEARCHES AND RECOVERIES

7. Search

• Where required, the IO may conduct a search in accordance with Sec. 165 of the Cr.P.C. by issuing a Notice of Search under Form 25.23(1)(a) of the Police Rules, as wel as an order under Sec. 103 Cr.P.C. requiring witnesses present at the search in Form 25.23(1)(b) of the Police Rules.

4

• Recovery memos wil have to be prepared in Form 25.23(1)(c) for any evidence or recoveries made and sent for analysis.

4. ARREST AND RELEASE OF SUSPECTS

8. Arrests

• The Police is authorized to arrest persons suspected of a cognizable offence, however, for non-cognizable offences, a warrant from a Magistrate is required before an arrest can take place.

• Where an arrest is made, the IO must send a report of the arrest to the concerned Magistrate.

• The IO may interrogate the suspect in custody. The suspect may provide information which may implicate other suspects or provide information regarding evidence and where it can be found.

• Where other suspects are implicated the IO may arrest them as well and interrogate them.

• Where the suspects provides information regarding evidence or the murder weapon or any other such information, the IO may conduct a search, as above, and recovery that evidence.

• Confessions before a Police officer have little to no value at trial and, therefore, al confessions by an accused must be made before a Magistrate under Sec. 164 Cr.P.C.

• If the suspect is to be detained for longer than 24 hours, he/she must be produced before a Magistrate within this period under Sec. 167 Cr.P.C. and the Police is to request the Magistrate for physical remand of the accused for further interrogation.

• The IO is to obtain the accused previous criminal record from through an Attestation Certificate in Form 25.7(1) of the Police Rules.

• The IO can also arrange for an Identification Parade to be conducted of the accused by witnesses as per Form 26.32(1)(e) of the Police Rules.

• Where there is insufficient evidence against the arrest person, the Police may release the individual under Sec. 169 Cr.P.C. on bond with or without sureties.

9. Submission of Police Report

• All documentation is to be prepared and compiled in a Police Report for trial of the accused under Sec. 173

of the Cr.P.C.

• The Police Report is submitted as a Charge Sheet also known as a Challan as per Form 25.56(1) of the Police Rules.

• Where the investigation cannot be completed within 14 days of the registration of the FIR, the Police is given a three-day grace period to submit an interim chal an which notes the result of the investigation made until then, along with reasons for not filing a final chal an.

• Where an interim report is submitted, the Public Prosecutor may request the Court for postponement of the trial to al ow the Police further time to complete the investigation and submit a Final Chal an. However, it is up to the Court whether it wishes to postpone the trial, after recording its reasons, or start the trial on the basis of the interim report.

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1. HOW DOES AN INVESTIGATION START?

The process for commencing an investigation depends on the type of offence. The Cr.P.C. recognizes two types of offences:

1. Cognizable Offences

2. Non-cognizable Offences

Al offences under the law in Pakistan are categorized as either one of these types. Cognizable offences are general y considered more serious crimes and al ow the Police to take immediate measures without requiring authorization from a Magistrate. Once information regarding a cognizable offence reaches the Police, they are bound by law to register a First Information Report (FIR) and then start the investigation. Non-cognizable offences, while also at times serious in nature, are those offences which require a Magistrate to first take cognizance of the potential commission of such an offence and then authorize the Police to investigate it. While the actual investigation of both types of offences general y fol ows the same procedure as outlined in the Cr.P.C., for the purposes of arrest of a suspect, a warrant from a Magistrate is required in non-cognizable offences.

2. OVERVIEW OF THE START OF AN INVESTIGATION

The overview of the start of an Investigation below fol ows the chart provided.

1. Receipt of Information concerning an Offence

•

At the first step an informant or complainant provides the information to the Police.

•

This information is then assessed by the concerned Police officer regarding:

i. Whether an offence has actually taken place

i . Whether the al eged offence is cognizable or non-cognizable under the law

2. Registration of an FIR in Cognizable Offences

•

If the Police determine that an offence has taken place and is cognizable then they shal register an FIR

under Sec. 154 of the Cr.P.C.

•

It is mandatory to register such an FIR in al cases concerning cognizable offences and the Police cannot refuse to register an FIR in such situations. 3

•

If the Police determine that no offence has taken place, they are not bound to register an FIR. 4

3. Refraining or Delaying an Investigation after Registration of an FIR in Cognizable cases

•

Not al FIR’s have to be investigated. The Police are given some discretion not to immediately commence an investigation and also to refrain altogether from conducting an investigation in cognizable offences under Sec. 157 of the Cr.P.C. The conditions in which an Officer-in-Charge of a Police Station may dispense with an investigation or delay it are:

i. In cases which are not of a serious nature

i . If it appears there is no sufficient ground for entering on an investigation

•

These powers are, however, to be used sparingly and it is not advised to delay or not conduct an investigation of an offence.

3 PLD 1975 Lahore 733

4 PLD 1988 Lahore 741

7

•

Where investigation is dispensed with the Officer-in-Charge of the Police Station wil forthwith send a report to the Magistrate under Sec. 157 indicating his/her reasons for not investigating the case.

•

The Officer wil also inform the informant giving the information that no investigation is taking place and where the informant is present at the Police Station, wil have him/her sign or make a thumb impression on the FIR.

4. Commencing an Investigation after Registration of an FIR in Cognizable cases

•

In cognizable cases the Police is empowered to commence an investigation under Sec. 156 Cr.P.C. when an FIR has been registered.

•

The Police officer wil forthwith send a report to the Magistrate under Sec. 157 Cr.P.C. and shal proceed personally or depute a subordinate officer to spot to investigate the facts and circumstances.

•

The officer investigating an offence wil at al times maintain a case diary under Sec. 172 Cr.P.C. in Form 25.54(1) of the Police Rules noting al actions taken with regard to the investigation.

5. Procedure in Non-Cognizable Cases

•

When the Officer-in-Charge of a Police Station determines that the information received by him/her concerns the commission of non-cognizable offence, he/she shal record the information in the Daily Dairy maintained by the Police Station under Sec. 155 Cr.P.C.

•

He/She wil then forward the complainant to the Magistrate as per Sec. 155 Cr.P.C.

•

The Magistrate may authorize the Police to conduct an investigation under Sec. 155 Cr.P.C.

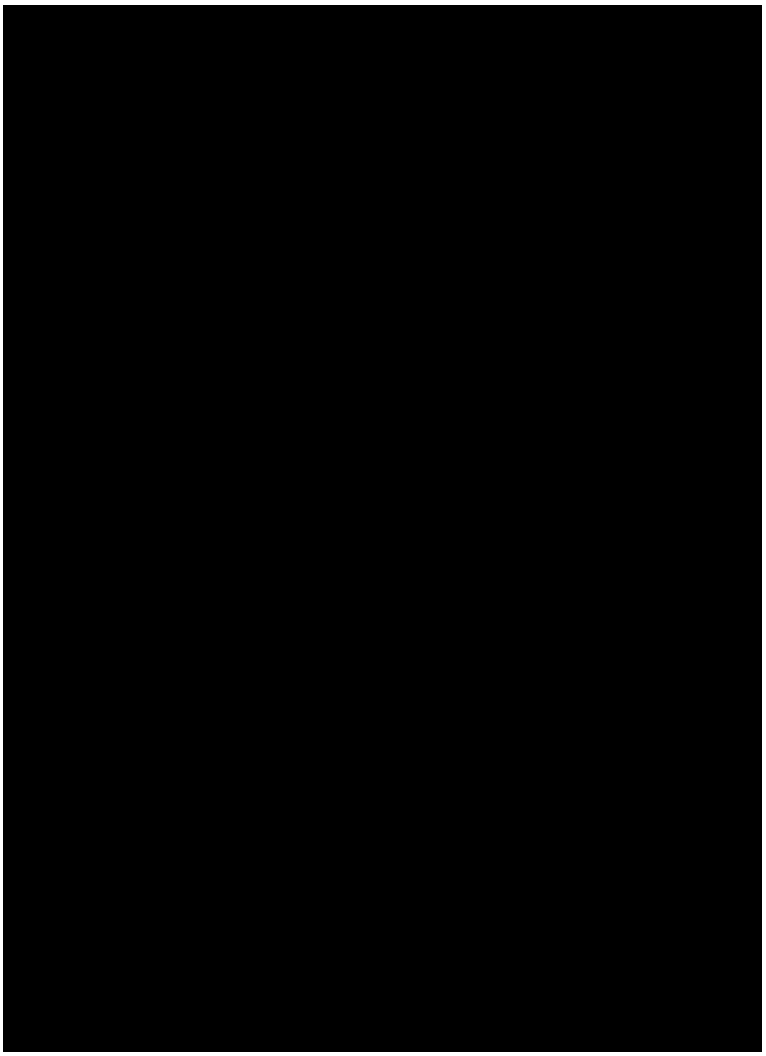
•

Once the Police are authorized by a Magistrate to commence an investigation in a non-cognizable case, they have the same powers of investigation as apply for cognizable offences (except in relation to arrest –

a warrant of arrest wil be required by a Magistrate).

8

[redacted]



THE START OF AN INVESTIGATION

Inform the Informant that

no investigation is taking

place and have him/her

KEY

sign/thumb impression on

the FIR

Procedure in Cognizable

Offences

Forthwith send a report to

Procedure in Non-Cognizable

the Magistrate u/s 157

Offences

stating his reasons for not

investigating

General procedural steps

Documentation to be

prepared

Refrain from

Investigation u/s 157

Procedural steps when not

pursuing investigation

Officer in Charge of a

Police Station Takes

Register FIR on Information

Decision whether to

Received u/s 154

Investigate the

Proceed to Crime Scene

matter u/s 156/157

Cr.P.C.

Commence

Cognizable Offence

Investigation u/s 156

by assigning an IO to

the Investigation

Receipt of

Assessment whether

Information from

Information indicates

Informant or

commission of a

Complainant

Cognizable or Non-

Report sent to

Cognizable Offence

Magistrate u/s 157

Cr.P.C.

Non-Cognizable Offence

IO starts preparing a Case

Diary of all actions taken

during investigation u/s

172 Cr.P.C. and Form

Record information

Magistrate

25.54(1) PR

in Daily Diary

Forward Complainant to

Magistrate may authorize

Magistrate

Investigation. Which shal be

conducted as for Cognizable

Offences, except Warrant wil be

required for Arrest

9

3. NON-COGNIZABLE CASES

Commencement of an investigation in non-cognizable offences is governed by Sec.155 of the Cr.P.C. Upon the informant giving information to the police about the occurrence of a non-cognizable offence, the officer is to enter such information in the Police Station Daily Diary (Roznamcha) and provide a copy of the same to the informant and refer him/her to the Magistrate as laid out under s.155(1) of the Cr.P.C.

Thereon, the informant is to bring that information before the Magistrate in accordance with section 155(2) of the Cr.P.C. Resultantly, if the Magistrate grants authorization, the Police wil then conduct an investigation with the

same powers of investigation as are available for cognizable offences, 5 except that the arrest of the accused is not to be made without a warrant.

Conversely, if the Magistrate does not deem there to be sufficient grounds for authorizing an investigation, he/she may dismiss such a request.

4. COGNIZABLE CASES

A First Information Report (FIR) constitutes the conveyance of information, regarding an occurrence to the police authorities. It is a document, on the basis of which, the police machinery is activated and set in motion i.e. the investigation commences. This then al ows the police to obtain first-hand spontaneous information for the occurrence of an offence, in order to exclude the possibility of fabrication, consultation, or deliberation on the part of the complainant. Moreover, the spontaneity of an FIR guarantees truth, 6 and it provides a sound basis for carrying out an investigation in the right direction. 7 FIRs are registered by the Police for cognizable offences under s.154 of the Cr.P.C. without the need for authorization from the Magistrate.

The factum of the receipt of the information has to be documented and supplemented by the record of the police station by making an entry in the daily diary register (Roznamcha). The correct documentation of the FIR and the information contained in it is a component of the standard of police action required to ensure a safe conviction of the accused.

This requirement is based on the absolutely essential requirement of documenting every bit of flow of information and subsequent police actions in their sequential order.

5. THE FIR REGISTRATION PROCESS:

I.

WHEN CAN AN FIR BE REGISTERED BY THE POLICE?

An FIR may be registered by a police officer, in charge of the police station on the basis of: 1. A complaint *(isthighasa)* lodged by the complainant who

could be eye-witnesses of the account , 2. An initial investigation at the crime scene by the investigation team

3. An investigation conducted by a JIT formed under Section 19 of the Anti-Terrorism Act 1997.

5 Section 155(3) of the Cr.P.C.

6 Mushtaq Hussain v. State, 2011 SCMR 45. 15.

7 Umar Hayat Saj ad v. SHO Police Station Mochi Gate, Lahore,2005 YLR 1313

10

FORM No. 24.5(1)

FIRST INFORMATION REPORT

FIRST INFORMATION OF A COGNIZABLE CRIME REPORTED UNDER SECTION 154, CODE OF CRIMINAL PROCEDUREABLES

Police Station _____ District _____

No. _____ Date and hour of occurrence

1	Date and hour when reported
2	Name and residence of information and complainant
3	Brief description of offence (with section) and of property carried off, if any
4	Place of occurrence and distance and direction from Police Station.
5	Steps taken regarding investigation; explanation of delay in recording information
6	Date and hour of despatch from Police Station

Signed _____ *Designation* _____ (First information to be recorded below) ***Note***. -The signature, seal or mark of the informant shall be affixed at the foot of the informationand shall be attested by the signature of the officer recording the "first information".

(REVERSE OF POLICE STATION COPY OF FIRST INFORMATION REPORT)(NOT TO BE PRINTED ON REVERSE OF OTHER COPIES)INDEX OF CASE DIARIES(To be filled in immediately on receipt of case diaries)

Serial No.	Date of case diary	Name of investigating officer	Serial No.	Date of case	Name of investigating officer	Serial No.	Date of case diary	Name of investigating officer

Information to be filled in when the charge-sheet or final report is submitted

Date and hour of submission of Charge-sheet or final Report and section under which	Names of witnesses	Name and residence of accused A. - Sent in custody for trialB. - On bail or recognizanceC. - Not sent for	Property (includingweapons) found
accused are sent for trial		trial	

Information to be filled in as soon as received

Date of receipt of chalan in Court	Offence according to whichconvicted or acquitted	Result of the case (In case ofconviction or acquital, the name ofcourt, date and details of the order)

II. FIR REGISTER AND FORM 24.5(1)

The Police Rules mandate the maintenance of around two dozen registers in each Police Station (Police Rule 22.45). Register No. 1 relates to FIRs and is known as the ‘First Information Report Register’. This Register is to have 200 pages in total and be a printed book in Form 24.5(1), reproduced below:

Every four pages of the Register wil be numbered the same and when an FIR is recorded it shal be done so in four copies (through carbon copying process). Each of the copies are to be signed by the informant/complainant and the concerned officer and the station seal is to be affixed to each one. 8 The original FIR copy wil be retained by the Police Station, the remaining three copies wil be dispatched as fol ows:

i.

One copy to the Superintended of Police or other gazetted officer nominated by him/her.

i . One copy to the Magistrate empowered to take cognizance of the offence as per Sec. 157 Cr.P.C.

i i. One copy to the complainant providing the information for the FIR.

8 Police Rule 24.1

This means that each FIR Register (Register No. 1) wil contain up to 50 FIRs registered by the Police before a new register is started.

III. ADDITIONAL RECORDS

In addition to fil ing in the FIR Register, the concerned officer must also record the substance of each FIR

(brief gist) in the Police Station Daily Diary.

IV. WHAT TO RECORD IN THE FIR?

Sec. 154 Cr.P.C. requires that “Every information relating to the commission of a cognizable offence if given oral y to an officer in charge of a police station, shal be reduced to writing by him or under his direction.”

The Police Rules FIR Form 24.5(1), above, mentions the fol owing items to note:

1. Date and hour when reported

2. Name and residence of informant and complainant

3. Brief description of offence (with section) and of property carried off, if any

4. Place of occurrence and distance and direction from Police Station

5. Steps taken regarding investigation; explanation of delay in recording information

6. Date and hour of despatch from Police Station

This information is by no means the complete FIR. Below this information, the complete first information provided by the informant/complainant is to be written.

At times it may be necessary to question the informant to gain a complete understanding of the occurrence of the offence and the Police Rules under Rule 24.1(4) require that special attention is paid to the fol owing matters:

a) The source from which the information was obtained and the circumstances under which the informant ascertained the names of the offenders and witnesses (if any are mentioned)

b) Whether the informant was an eye-witness to the offence.

The answers to these questions are to be clearly recorded in the FIR.

V. THE NEED FOR THE INFORMANT TO SIGN THE FIR

Sec. 154 Cr.P.C. mandates that the informant sign the FIR once it is fil ed in. The purpose is to ensure accurate details have been recorded which the informant is satisfied with and, therefore, signs the FIR. The informant may read the FIR once it is fil ed in or may have it read out to him/her as per Sec. 154 Cr.P.C. before signing it.

It may be noted, however, that the courts have not invalidated FIRs and their subsequent investigations merely due to the procedural irregularity of the informant not signing the FIR. 9

9 In *The State v. Maheen Zafar,* 2018 PCr.LJ 841, the court ruled:

VI. SPECIAL PROCEDURE IN CASES OF VIOLENCE AGAINST WOMEN

In cases where the Police is given information by a woman against whom any of the fol owing offences have been perpetrated:

i.

Acid Attacks (Sec. 336B PPC - Hurt caused by corrosive substance),

i . Sexual Assault (Sec. 354 PPC - Assault or criminal force to woman with intent to outrage her modesty), i i. Stripping a Woman of her Clothes (Sec. 354-A PPC - Assault or use of criminal force to woman and stripping her of her clothes),

iv. Rape (Sec. 376 PPC), or

v. Sexual Harassment (Sec. 509 PPC – Insulting modesty or causing Sexual Harassment)

The concerned officer recording the statement must do so in the presence of a female police officer, female family member, or any other person with the consent of the complainant. 10

Furthermore, if the woman giving such information is distressed for any reason the concerned officer recording the information shal do so at her residence or at a convenient place of the complainant's choice in presence of a police officer or family member or any other person with consent of the complainant. 11

VII. WHEN THE INFORMATION PROVIDED TO THE POLICE IS DOUBTFUL

In situations where the Police Officer suspects that the information being provided to him/her is doubtful, the fol owing procedure is mandated by the Police Rules:

Police Rule 24.4 Action when reports are doubtful.— (1) If the information or other intelligence relating to the al eged commission of a cognizable offence is such that an officer in charge of a police station has reason to suspect that the al eged offence has not been committed, he shal enter the substance of the information or intelligence in the station diary and shal record his reasons for suspecting that the al eged offence has not been committed and shal also notify to the informant, if any, the fact that he wil not investigate the case or cause it to be investigated.

(2) If the Inspector or other superior officer, on receipt of a copy of the station diary, is of opinion that the case should be investigated, he shal pass an order to that effect, and shal , in any case, send on the diary or an extract there from to the District magistrate for his perusal and orders.

VIII. MANDATORY DUTY OF POLICE TO RECORD THE FIR

It is to be noted that the recording of an FIR under this provision is obligatory and whenever information is brought to the SHO in respect to the commission of an offence, it is his/her duty to record it. It is only upon a careful examination of the contents of the information laid before the SHO, that he can form an opinion that no cognizable offence has been committed. Thereupon, he can choose not to register an FIR. 12

"… Absence of signature to the First Information Report by the informant is not necessary to the extent that its absence will vitiate and nullify such

report. If there is information relating to the commission of a cognizable offence, it falls under section 154 of Cr.P.C. and becomes admissible in evidence as such, even though the Police Officer may have neglected to record it in accordance with law."

10 Sec. 154 Cr.P.C. first proviso inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 (Act XLIV of 2016).

11 Sec. 154 Cr.P.C. second proviso inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 (Act XLIV of 2016).

12 PLD 1988 Lah. 741

13

IX. WHEN THE POLICE DO NOT REGISTER THE FIR: REMEDIES FOR COMPLAINANTS

Provided an FIR is not registered by the Police, the aggrieved person(s) can seek recourse through the fol owing:

1. An application's to the Session's Judge under Section 22-A(6) of the Cr.P.C. 13 Under this provision the Session's Judge, if he is of the opinion that a cognizable offence took place, can compel the SHO to file an FIR. That being said, the Justice of the Peace does not have the power to direct the Police in respect to the nature of offence, addition or deletion of legal provisions or to make any observations that have a bearing on the investigation.

2. By filing a private complaint under Section 190(a) read with Section 200 Cr.P.C. before the competent Magistrate. When such a complaint is filed, the Magistrate shal examine the

complainant upon oath, and the substance of the examination shal be recorded to writing and shal be signed by the complainant and the Magistrate. However, it must be noted that the Magistrates ought to not accept such complaints when no *prima facie* offence is being made out on the facts presented by the private complainant. Provided that an offence is being made out, Section 202(1) of the Cr.P.C. empowers the Magistrate to

direct the police to investigate, subsequent to which, he would be empowered to utilize al the powers under the Cr.P.C in respect to investigating cognizable offences. However, it must be noted that this mechanism is a mere preliminary inquiry and does not entail the determination of guilt.

Rather, the accused has no right to participate in such proceedings except when summoned by the Magistrate.

3. In cases of an urgent nature, the aggrieved person can institute a writ petition under Art.

199 of the Constitution of Pakistan before the High Courts for the registration of an FIR.

However, the approach adopted by the High Courts to such writs has normal y been quite

rigid whereby if alternate remedies are available, no directions would be made by the High Court to register the FIR.

X. FIR CHECKLIST

The fol owing check list, serves as a helpful tool to evaluate the information that can be added into an FIR: **S. NO ACTION**

YES

NO

NOT APPLICABLE

1. The grounds or reasons for believing that the offence is a

cognizable offence.

2.

All available details of the incident (including its date and

time).

3.

Insertion of the committed offences.

(Provided it is an offence under the ATA, the Police officer

must ensure that the case fal s under section 6 of ATA and only

then insert Section 7 of the ATA in the FIR.)

13 Session Judges are ex-officio Justices of Peace under Section 25 of the Cr.P.C.

14

4.

Place of incident and distance between the place of incident

and the police station that has jurisdiction.

5.

An explanation of delay (if applicable).

6.

Whether the information was received by post.

7.

Any Information related to the suspect (if any) of the incident

for example the description of the suspect, the clothes he/she

was wearing, etc.

8.

The list of witnesses

9.

Role of the accused, if it can be identified by the complainant,

to be mentioned in the FIR.

10.

The complainant has read and signed the report.

(In case, the complainant is il iterate, the police officer shal

reduce the oral given information/ statement provided into

writing and read it over to the informant and take his/her

thumb impression on it. 14)

XI. CANCELLATION OF FIRS

As per Police Rule 24.7, no FIR can be cancel ed without the orders of a magistrate *unless* the investigation of the case is transferred to another police station or district.

An FIR is to be cancel ed when information that has been received under s.154 of the Cr.P.C. turns out to be false, is non-cognizable or a matter to be dealt in a civil suit. If that is the case, the superintendent is to send the FIR report and other papers on record with the final report to a magistrate of the first class for orders of cancellation. On receipt of an order from the magistrate, the officer in charge of the police station shal cancel the FIR by drawing a red line across the page and noting the number and date of order of the magistrate.

XII. ACTION TO BE TAKEN WHEN AN OFFENCE OCCURRING IN ANOTHER POLICE STATION IS REPORTED

There may be situations where no doubts have arisen in respect to the jurisdiction at the time of writing the FIR.

However, during the course of investigation, it is revealed that offence was committed in the jurisdiction of another police station, the SHO, in accordance with Police Rule 25.4, shal :

1. Send information to officer-in-charge of such police station.

2. On receipt of information such officer shal at once proceed without delay to the place where investigation is being held and undertake the investigation.

14 In *The State v. Maheen Zafar*, 2018 PCr.LJ 841 the court ruled:

“Under section 154 of the Code of Criminal Procedure, 1898, every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shal be signed by the person giving it, and the substance therof shall be entered in a book to be kept by such officer … in the case there is any procedural irregularity including not signing of the complaint that wil not vitiate the criminal trial or tarnish the case of the prosecution in any way.”

The court, in the same case, further opined:

“… Absence of signature to the First Information Report by the informant is not necessary to the extent that its absence will vitiate and nullify such report. If there is information relating to the commission of a cognizable offence, it falls under section 154 of Cr.P.C. and becomes admissible in evidence as such, even though the Police Officer may have neglected to record it in accordance with law.”

15

6. EVIDENTIAL VALUE OF AN FIR

There is ambiguity with respect to the evidential significance of the FIR and while some rulings have observed that is not an essential piece of evidence and can only be used to corroborate or contradict the person at trial who provided the information to the Police, other judgments have described it as a ‘foundation stone of a criminal case’. The fol owing two cases il ustrate this incongruity:

In ***Capt. Dr. Munir Ahmed Khan v. The State***[15] *,” it* However, in ***Nasima Bibi v. The State***[16], it was *was observed that it is not an essential that each*

held: “*F.I.R. … is a foundation stone of a criminal*

and every detail must be incorporated in the FIR

case although it is not a piece of substantive

which is a simple device to set the law in motion.”

evidence but it is always used for contradicting

under Article 140, The Qanun-e-Shahdat Order,

1984 and corroborating under Article 153 of the

Qanun-e-Shahdat Order. Furthermore, when some

infirmities or irregularities are found in an F.I.R, it

certainly affects the final determination of the case

especially when it is lodged by a mere stranger and

not by an eye-witness.”

7. INSERTION OF SECTION OF LAW REGARDING OFFENCE IN FIR

The concerned officer after receiving the complete account from the informant is required to insert the relevant section of the law under which

the offence has taken place in the FIR. This is a very important aspect of the FIR as different sections of the law can have varying consequences on:

i.

how the investigation is subsequently conducted,

i . what powers the investigator may have for the investigation,

i i. what the evidential standards may be at trial,

iv. what Court would have jurisdiction over the matter,

v. whether the accused has a right to bail,

vi. how difficult it wil be for the Police to col ect al the evidence for the particular offence, and vi . how difficult it may be for the prosecution to secure a conviction.

The officer must, therefore, be careful in applying the correct section of the law. An example is the widespread insertion of Sec. 7 of the Anti-Terrorism Act, 1997 in cases that do not concern terrorism at al . Once a terrorism charge is applied, the accused does not have a right of bail, the Police have greater powers of investigation, the evidential standards may potential y be reduced at trial, the case goes to special Anti-terrorism courts, and the prosecution has to prove that not only did the accused commit an il egal action but also did so with the intention to terrorize the public, or a section of the public, or overawe the government, etc. In such situations, such as personal enmity cases, where the intent of the accused was not to terrorize the public but exact revenge or some other motive, it is incorrect to apply a terrorism charge. The relevant PPC offence should be inserted instead.

15 1997 PCr.LJ 348

16 2008 PCr.LJ 613

It is to be noted that once an investigation is underway and further information or evidence comes to light the Police are not bound by their earlier determination of offences and sections of the law as applied in the FIR. The Final Police Report which is forwarded to the Court when an accused is sent up for trial can include additional sections of the law or completely different ones than those mentioned in the FIR. This is because the FIR is made at the earliest stage after the occurrence of an offence and is, at times, based on limited information.

8. ACTIONS TO AVOID DURING REGISTRATION OF AN FIR

The fol owing are some measures to avoid when registering an FIR

MEASURES

RELEVANT REGULATION

RELEVANT

TO AVOID

/RULE APPLICABLE

JURISPRUDENCE

• Do not delay the registration

Police Rule 24.1.

Bashir Ahmed v. State **2015 MLD 313**,

of FIR. If it gets delayed, it is

In this case, F.I.R. was lodged the next day of

compulsory to provide a

the occurrence to which the Court said that,

cogent explanation.

“delay in lodging F.I.R., could not be taken

lightly, as it casts serious doubt in the case of

the prosecution.”

Hence, the accused was acquitted giving him

the benefit of doubt.

• General y, more than one

Malik Asghar v. The State **2005 MLD 1114, [7]**

FIR cannot be registered.

“There is not denial to the fact that a second

Secondly the FIR should

F.I.R can be registered for an occurrence. Rule is

not be a revised version

settled that there is no such prohibition in the

of the first one. It

law yet every case has to proceed on its own

establishes a separate

circumstances and facts. The purpose and

cognizable offence.

intent to inform the police is to activate the

police to proceed and investigate into the

occurrence. The investigation of the police should not ordinarily be stopped and stayed til it is essential due to some exceptional circumstances, is also established rule. …. When the version of the accused can easily and truly be recorded and brought on record, then in my opinion there is no need of registration of the second F.I.R. ***There may be some cases of exceptional nature in which it would be necessary to record second F.I.R but in all and in every case, this course cannot be adopted. No hard and fast rule can be laid down for this. …. There must be some strong and sound reason behind the order to direct the police to record a second F.I.R"***

Justice Khosa, in a recent case, ***Mst. Sughran Bibi v. State***, ruled that "*the registration of multiple FIRs is not permitted as a general rule. However, registration of second FIR is an*

exception to this general rule. Because the registration of multiple FIRs mean the different cases and the separate trial for each case. 17

"During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case." 18

Justice Khosa, in a recent case, *Mst. Sughran Bibi v. State*, ruled that *"the registration of multiple FIRs is not permitted as a general rule. However, registration of second FIR is an exception to this general rule. Because the registration of multiple FIRs mean the different cases and the separate trial for each case.* *19*

“During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.” [20]

• Do not cancel the FIR

Police Rule 24.7.

without the orders of a

Magistrate of the Ist

class, unless investigation

of a case is transferred to

another police station or

district. Note: As per

section 24.7 of the Police

Rules 1934, a transfer of

investigation of a case to

another police station

results in cancel ation of

the FIR

17 Human Rights Case No. 10842-P of 2018.

18 Human Rights Case No. 10842-P of 2018, [27].

19 Human Rights Case No. 10842-P of 2018.

20 Human Rights Case No. 10842-P of 2018, [27].

• The police officer must

not arbitrarily categorize

the offence under the

category of terrorism

described u/s 6 and 7 of

Anti-Terrorism Act 1997.

9. INVESTIGATION IN JURISDICTION OF OTHER POLICE STATION

It is important to note that when information is received regarding a cognizable offence which happened to have occurred in the jurisdiction of another police station the relevant Police officer is to take the actions outlined in Rule 25.3 of the Police Rules as noted below:

25.3. Action when offence occurring in another police station is reported. – When the occurrence of a cognizable offence in another police

station jurisdiction is reported, the fact shal be recorded, in the daily diary and information shal be sent to the officer in charge of the police station in the jurisdiction of which the offence was committed. Meanwhile al possible lawful measures shal be taken to secure the arrest of the offender and the detection of the offence.

The purpose of this rule is to ensure that the proper procedure and relevant police action takes place regardless of the Police station where the information is received. Members of the public are rarely familiar with the limits of Police station jurisdictions and this rule is to facilitate the public.

19

CHAPTER 3 – POWERS OF INVESTIGATION

1. POWERS OF INVESTIGATION OFFICERS 21

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1. POWERS OF INVESTIGATION OFFICERS

Depending upon the nature of crime under investigation and the circumstances faced by the investigation officers, they have many powers. The powers have been conferred in the Code of Criminal Procedure21 and supplemented by the Police Rules22. The main powers are summarized as fol owing:

a. The investigation officer has al the powers of a police officer conferred under the Code of Criminal Procedure. General y, the IO can arrest, carry out search, seize, require production of documents, and record statements of persons acquainted with circumstances of a case.

b. Al the police officers of watch and ward are required to render assistance to an investigation officer when required.

c. In terrorism cases, where Joint Investigation Teams (JITs) have been constituted, the IO may convene its meetings.

d. The IOs have the power to log every activity of investigation in the Daily Diary Register and the Case Diaries of the case under investigation.

e. The IOs are required to submit the final report under section 173 Code of Criminal Procedure to the court after getting it forwarded through Station House Officer/Incharge of a Police Station. The forwarded cope of final report is then to be formal y submitted through the office of prosecutor to the court of competent jurisdiction. 23

f. The power to get assistance from forensic units and technical people also rests with the IOs. 24

2. POWERS OF THE SHO/OFFICER INCHARGE OF A POLICE STATION

The Station House Officer (SHO)/Officer Incharge of Police Station has been given the powers of 'chief investigation officer' under the Rules. 25 He has al the powers of a police officer as well as of the investigation officer. The SHO has to render assistance to IOs working in the area of jurisdiction of his police station as wel as other IOs coming from other police stations.

21 Different sections cover this in the Code of Criminal Procedure Code, 1898. For reference, Sections 42 to 105 and Sections 156 to 175 and 551

may be seen.

22 Rules 25.1 and 2 of the Punjab Police Rules, 1934.

23 Section 173 of Code of Criminal Procedure, 1898 read with Rule 25.57 of the Police Rules, 1934.

24 Rule 25.14 of the Police Rules, 1934.

25 Rule 22.1(3) of the Police Rules, 1934.

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THE CRIME SCENE AND CRIME SCENE MANAGEMENT

1. THE CRIME SCENE AND ITS IMPORTANCE

The crime scene is the location or place where the offence has occurred. Although there is no definitive legalistic definition, any location(s) associated with the crime which contain relevant evidence may also be cal ed the crime scene. A crime scene is a location anywhere that may provide potential evidence to an investigator. It may include a person's body, any type of building, vehicles, and places in the open air or objects found at those locations. Crime scene examination therefore refers to an examination where in addition to tradition investigative techniques, forensic or scientific techniques are also used to preserve and gather physical evidence of a crime. 26

The nature, circumstances and surroundings of every offence are different and so too is its aftermath and the consequential situation which makes up the crime scene. This obviously suggests that the crime scene is never always the same, as every situation may vary according to the circumstances. With the varying crime scenes and consequences, the Investigation Officers (IOs) that are responsible for the management of the scene have to adapt to and improvise an appropriate approach that suits each situation at hand immediately. The approach and methodology of control ing the scene must be molded accordingly and should be decided quickly to minimize damage to evidence, expedite its col ection and preservation.

Within an investigation, evidence obtained from a crime scene can be useful for a variety of purposes including, *inter alia*: 1. Determining how the offence took place

2. Determining why the offence took place

3. Linking people and objects to and from the crime scene

4. Corroborating/negating witness and suspect accounts

5. Identifying suspects or witnesses

6. Providing further leads for investigation

2. TYPES OF CRIME SCENES

Crimes scenes can be of various types and it is useful to understand the various issues that may arise as a result of the unique features of each:

i.

Outdoor Crime Scene

A crime scene that is located outdoors is most common in terrorist incidents, and also is the most susceptible to contamination and damage in the shortest of times. If the area has not been preserved or cordoned off as per the set procedures, individuals can easily tamper with extremely crucial evidence as the scene is most vulnerable. When it comes to outdoor crime scenes, the time of day, temperature, and lighting also has an influence on the way the crime scene is managed. The environmental conditions such as heat, cold, snow or rain can damage the evidence present at the scene and demands more swift preservation. The outdoor scenes are best observed in broad daylight and this may create problems when it comes to night-time outdoor crime scenes. Some crime scenes consist of a combination of outdoor and indoor scenes. In such cases, the outdoor scene must be catered to first with priority, in terms of cordoning off, preservation and evidence col ection.

26 UNODC - Toolkit to Combat Trafficking in Persons, Chapter 5: Law Enforcement and Prosecution (Tool 5.19) pg 193

(https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf)

24

i . Indoor Crime Scene

The indoor crime scene can be said to be less vulnerable to loss due to the environment than an outdoor crime scene, although that doesn’t make it safe from any contamination. The primary focus in such situations is to minimize access to the scene as much as possible. With indoor crime scenes it is easier

to keep away individuals that may tamper with the evidence. The access to the scene must be limited and reference samples of relevant evidence should be col ected in a systematic manner and shared by the parties.

i i. Conveyance Crime Scene

The term conveyance refers to a means of transportation. The kinds of crimes committed in a conveyance can be a vehicle burglary, grand theft, car theft, etc. Cars, trucks or other forms of transportation can also be termed as a crime scene. These most commonly are the secondary crime scene and act as an extension to the original scene of the crime. The suspects of a crime may have left behind helpful evidence to the main attack. In some cases, the entire vehicle could be taken into the laboratory by the experts for examination as well.

3. PRIMARY & SECONDARY CRIMES SCENES AND THE DISPOSAL SITE

The crime scene has been further divided into three main categories; the primary scene, the secondary scene and disposal sites.

I.

PRIMARY CRIME SCENES

The primary crime scene is the location where the offender(s) engages in the majority of their attack or assault upon their victim or victims. The primary scene, as the name suggests, is most commonly the source for the most valuable evidence to the case. This location tends to have the most direct evidence to document the attack or assault, helps in determining what type of weapon was used, how the perpetrators approached the victims, what their strategy was, what their aim was. This location is also extremely vital as it possesses critical evidence concerning the victims, whether injured or kil ed. It is at this location that witnesses to the event wil be found.

From a management perspective knowledge of the type of evidence that is likely to be found at the primary scene is important. Secondly, an IO managing a crime scene must also be aware that the primary crime scene is where there is likely to be the most chaos. For example, the immediate

aftermath of a terrorist attack is gruesome, survivors are in a state of shock, witnesses too wil be recovering from the attack that just took place. Managing such a situation in a calm and col ected manner is a difficult task but one that can lead to immense benefits in relation to investigation and subsequent trial of the accused.

II. SECONDARY CRIME SCENES

While the primary crimes scene often takes the highest precedence amongst investigators, secondary crimes scenes can be equal y important. The secondary crime scene would be any location where there may be evidence of criminal activity outside the primary scene. This could include the home of the perpetrator, the vehicle he used to get to the scene of the crime, a Public Cal Office, a bomb making workshop, etc. The reason such crimes scenes can occasional y be of greater value than the primary scene is that they can give the investigator more direct evidence of the perpetrators intent, links, ideology, plans, future plans, etc. This evidence can help ensure a conviction at the trial stage and should not be overlooked. The secondary crime scene can also confirm or deny lines of investigation. A 25

search of a suspect's house which reveals nothing suspicious or confirms the suspect's alibi can help rule out that suspect and al ow the IO to focus his attention on the next lead.

III. DISPOSAL SITE

The term 'disposal site' refers to the place where a body is found i.e. where the suspect disposed of the body after kil ing the victim. This location can often be the same as the primary scene. However, in cases where the suspect wishes to conceal the kil ing, the body is usual y moved to a different location (the disposal site). 27 Disposal sites can offer their own unique chal enges; firstly, the location of the body has deliberately been concealed to prevent anyone from knowing. Concealment techniques could include burial or damaging the body so it cannot be recognized. Here the IO managing the scene must be aware of potential hazards which could affect the body of the victim and any evidence which could be obtained from it. It is important for the IO to also know the interval between the time of death and when the

body is being recovered. The greater the delay the more decomposition the IO should expect and cater for.

In the case of a robbery at a bank, the bank would obviously be the primary scene, but the car in which the robber flees and his hideout would be the secondary scenes. In some cases, the secondary scene or disposal site may be the only scene that the investigating officers know of upon intimation of the offence, and it is upon further examination that they may find links to the original or primary crime scene which may contain more useful evidence.

4. THE BOUNDARIES OF CRIME SCENES

Theoretical y, the perimeters of a crime scene may be easy to understand, however when it comes to practical differentiation this may not be as simple. In many cases, there may be a number of crime scenes involved in a case and it becomes difficult to analyze exactly which scene is primary or secondary for the purposes of the case. With more complex crimes and offences, the evidence and relevant information can be spread out to multiple locations.

Hence those inspecting and investigating must also make sure that secondary crime scenes are also wel -examined.

Most of the time, the evidence col ected at the primary scene indicates towards other locations that may be relevant to the case. It is therefore useful to note that crimes scenes can be:

i.

Single Crime Scenes:

In which al of the evidence is available at a single location e.g. the location of a murder where the suspect is stil present and arrested from. This single location would also be the Primary Crime Scene and could be both indoor, outdoor, or in a vehicle (i.e. conveyance crime scene).

i . Single Large-scale Crime Scenes:

Singe Large-scale Crime Scenes are those in which a single criminal act has occurred. The nature of the act is such that it has covered a large area e.g. a single bomb blast has occurred which has potential y spread evidence across a large area. These are usual y outdoor crime scenes but can also occur indoors e.g. a gun attack by several attackers in a multi-floor building, where the attackers kil or wound persons on different floors. This example can also be known as a Compound Crime Scene which has several connected but independent crimes scenes. Each floor or location would be a primary crime scene where important evidence may be found.

i i. Multiple Crime Scene:

27 Turvey, B. (2002). Criminal profiling: An Introduction to Behavioral Evidence Analysis. Oxford: Academic Press.

Where several linked offences have taken place e.g. multiple bomb-blasts or armed attacks taking place by the same terrorist group in different locations of a city. Each location would be a primary crime scene and could be indoor, outdoor, or in a vehicle. The house or other location where the terrorist group planned or prepared for these attacks would be the secondary crime scene and may also furnish important evidence for investigation purposes.

5. ARRIVAL & MANAGEMENT OF THE CRIME SCENE

I. ARRIVAL AT THE CRIME SCENE

Once an FIR has been registered for a cognizable offence or a Magistrate has ordered an investigation for a non-cognizable offence[28], it is the duty of the officer in charge of the Police Station or an officer deputed by him/her “to proceed in person… to the spot, to investigate the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender.” [29] Police Rule 25.10 also reiterates this point and further notes:

25.10. Immediate dispatch of an officer to the spot. – When a report of a cognizable case is recorded…

…. a police officer shal proceed to the scene immediately.

Here the terms “spot” and ‘scene’ are used interchangeable but refer to the crime scene.

Once the IO arrives at the crime scene, he/she is to assume both a managerial role as well as an investigatory role.

As a Manager of the Crime Scene he/she is to be formal y handed over the crime scene by the police officer who may have first arrived there (first responding police officer).

II. FIRST RESPONDING OFFICER AT THE CRIME SCENE

The first responding officer, if he/she is not competent to complete the investigation, shal take al possible steps to preserve the scene of the crime from disturbance, to record particulars of and secure the presence of potential witnesses, obtain information relating to the case and arrest the culprit. 30 The first responding officer is also to handover the crime scene to the designated IO upon his/her arrival. This wil include sharing al information and documentation that the first responding officer has been able to obtain and record until then.

III. OTHER FIRST RESPONDERS

Fol owing a crime, and depending on its nature, location and time the people present on the location shal vary and so shal the response strategy. It is quite possible that before the IO arrives other persons arrive as first responders to the crime scene, this may include:

•

General Public, Bystanders, Relatives of Victims, etc.

•

Rescue 1122, Private Ambulance Services and the Fire Brigade

•

Traffic Police

•

Military Police, Intel igence Agencies and other LEAs

•

Electronic and Print Media

28 Sec. 155 Cr.P.C.

29 Sec. 157(1) Cr.P.C.

30 Police Rule 25.10

IV. MANAGEMENT AND COORDINATION OF FIRST RESPONDERS

In many cases members of the public wil try to offer help or may simply be curious. In cases of injury or death of a person, healthcare professionals such as ambulance personnel and paramedics may arrive. In some cases, especial y arson or other offences involving fires or destruction, the Fire Brigade may arrive before the Police. Nearby traffic wardens may also arrive. In offences near military cantonments or other such instal ations, members of the Military Police may be present. In cases of terrorism especial y, members of intelligence agencies or other Law Enforcement Agencies may arrive before the IO. Final y, the media can receive reports as quickly as the police may and arrive earlier or at the same time as the IO.

It is critical that al these persons are managed effectively by the IO. While preserving the evidence at a crime scene always remains the priority of the IO as it relates to his/her primary objective – investigating the offence, there may be situations where the IO has to first ensure safety at the crime scene (from secondary attacks or explosive devices) or ensure that victims receive medical assistance. It is therefore important that the officer managing the crime scene always keep in mind:

a. Assisting Victims

b. Safety of al Persons (including Police personnel)

c. Preservation of Evidence

V. GENERAL PHASES OF CRIME SCENE MANAGEMENT

As noted above, each crime is unique and each crime scene wil be different requiring its own response from the IO

managing it. The fol owing table31 provides general guidelines regarding the various phases of crime scene management for most cases:

PHASE

FUNCTIONS TO BE PERFORMED

Reporting and Activation

• Reporting should be fol owed by immediate action wherein first

responders, investigating officers and/or technical services are

dispatched.

Responding

Refers to the actions taken by the first responder who may be a mobile

patrol officer, the SHO, the investigation staff or any other quick reaction

response team.

• Assess the situation

• Make arrests if required

• Remove unauthorized personnel from the scene

Control ing

• Secure crime scene with physical barriers including crime scene tape

to prevent contamination of the crime scene.

31 Table adapted from Barrister Abdul Khalique Shaikh (PSP) and Muhammad Akbar (PSP, QPM, PPM) 2014. ‘Basic Investigation Handbook’.

Paramount Books (Pvt.) Ltd. Karachi. pg. 63-66.

28

• Establish a Command Centre for effective liaising with the press and other departments.

Handover

Where the first responder is a junior officer he is to handover the crime

scene to the authorized investigating officer or a senior officer.

Subsequently:

• The first responder must give the IO any of the documentation

relating to the crime that has been committed and brief them about

actions that have been taken.

Planning

Evaluate the crime scene to ascertain further actions that can be taken.

• The way and order in which relevant resources are to be used or

deployed.

• The type of expertise and assistance required at the crime scene

(e.g. forensic agency, bal istic experts, bomb disposal unit etc.)

Investigation and Processing

During this phase, the IO commences actual investigation and starts to gather information about the crime and/or the commission of the crime. Meanwhile, the crime scene manager continues his duties in tandem and must:

• Ensure the crime scene is photographed before it is altered and the physical evidence is in its original position

• Coordinate the processing of evidence which entails al evidence to be logged and handled in accordance with relevant SOPs to maintain the chain of custody and to preserve the integrity of evidence.

Debriefing

• Conduct a final survey of the crime scene.

• Review al activities that took place.

• Determine if al objectives were met.

• Debrief al personnel involved.

Restoring

• Al equipment used at the crime scene be removed.

• Ensure that photographs have been taken.

• All evidence is accounted for and logged into the evidence

management system.

• Al documents have been given to and are in possession of the IO.

Releasing

• Hand-over the crime scene to the owner or person(s)/entity

identified for the handling of the premises.

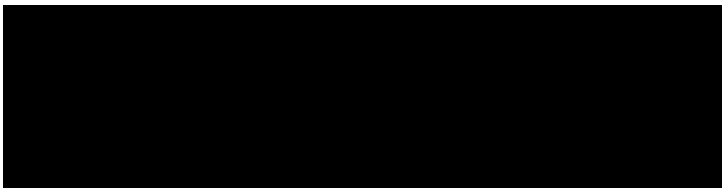
Evaluation

• Make recommendations for improvement for subsequent crime

scene investigations/management.

VI. MANAGING TERRORIST ATTACKS AND OTHER DANGEROUS CRIME SCENES

The above general guidelines for crime scene management require modification in cases of terrorist attacks or where there is suspicion that the crime scene may be dangerous or unsafe for any reason. Terrorist groups in Pakistan have 29



been known to undertake secondary or even tertiary attacks at the site of bomb blasts or other attack so as to target first responders, especial y Police

or Military personnel. Secondary explosives may be planted or terrorist may lie in ambush to target Security Forces. It is imperative in such situations to modify the crime scene management approach to ensure safety of al persons concerned.

The fol owing two stages of managing a crime scene are suggested actions to take by responsible officers before regular investigatory work begins in relation to dangerous crime scenes such as those in terrorist attacks: STAGE 1

Protection of the

Crime Scene

STAGE 2

(including the

Safety Clearance

evacuation of

Casualties)

Figure 1 - Stages in Managing a Terrorism related Crime Scene

Stage 1 – Protection of the Crime Scene

Initial Assessment

Upon arrival at the crime scene the IO must undertake an immediate initial assessment. This wil help him/her determine the type of crime scene it is, whether persons require medical attention, risks of contamination from the public or first responders, where key pieces of evidence are situated.

Ascertaining the Perimeter and Establishing Cordons

The IO should then ensure that members of the public are prevented from contaminating the crime scene. He/She should first identify the perimeter of

the crime scene that needs to be managed. Once this is identified the IO should establish three layers of cordons with the assistance of other Police officers or members of the public in enforcing the cordons.

For instructional purposes, a typical crime scene can be divided into the fol owing:

1. The inner layer

2. The outer layer

3. The traffic management layer

Inner Layer

Outer Layer

(Command Area)

Traffic

Management Layer

30

Taking the example of an outdoor crime scene, as is the case in many terrorist incidents: Inner Layer/Cordon:

•

The inner layer is the core crime scene and contains most of the evidence that must be protected and immediate measures must be taken to do so. For example, if there has been a terrorist attack in a public park, natural y there are a great number of people, potential y families with their children. If there has been an attack in a certain area of the park and there are dead bodies lying around, the public must be prevented from moving in and out of that area.

•

He/she has to cordon off the inner layer from al public interference. The area is to be secured from the general public by the responders (i.e. including additional police force if needed) and barriers must be set up to indicate that entry beyond a certain point is not al owed.

Outer Layer/Cordon:

•

Once the core area has been secured or, in other words, the inner cordon has been set up, the second tier of barriers must be set up and this is referred to as the outer cordon/layer.

•

The outer cordon acts as the ‘command area’, where al the responding officials, i.e. police officials, Bomb Disposal Unit (BDU) officials, Forensic experts, etc. may set up their command posts and keep their equipment.

•

The outer cordon is also a buffer zone between the public and the core crime scene, where only authorized officials may be al owed. The size of the cordon depends largely on the situation and the location.

However, the outer cordon must be far enough away from the inner cordon that it does not endanger the integrity of the valuable evidence at the scene due to the presence of responders, their equipment, or their footprints, etc. It is preferred to have as large an area as possible given the circumstances. This outer cordon must therefore be at a reasonable distance. Following the public park example as above, if the attack was in the middle of a cricket ground in the public park, the area where the victims were found would be separated as the inner cordon and the boundary of the cricket ground of the park should be separated as the outer cordon.

•

Cordons should be made with the help of crime scene/biohazard tape, which is brightly colored, and indicates that the area beyond the tape is an active

crime scene and may contain hazards for those passing by. Such tape may not always be available and so some other material such as rope or other object may be used to demarcate the cordons.

•

Al the individuals crossing in and out of this area should be required to sign in/out so as to ensure security of the area and to be able to ensure that only authorized personnel are given access to the crime scene.

This also limits contamination of the evidence.

Traffic Layer/Cordon:

•

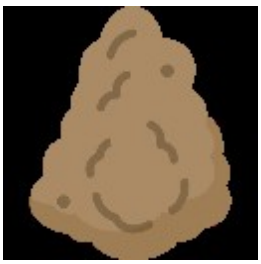
The final cordon is the traffic cordon, which is to be primarily regulated by the responding traffic police.

This cordon separates the traffic and other general public from the inner and outer cordons.

•

The traffic police officials are also responsible at this point to create alternate routes for vehicles that are passing by or through the area. Managing this can be difficult depending on the population of the area, its surrounding and of course the timings of the attack. For example, in the case of the public park, it may be near to a school and possibly surrounded by a residential area, which may cause further chaos and hindrances in securing the cordons in a timely and safe manner.

Establishing a Path for Paramedics



As soon as possible the IO should coordinate with healthcare professionals or paramedics to treat and evacuate casualties from the scene. The IO should designate a path that is fol owed by al healthcare workers which should be strictly fol owed by them. This wil ensure that the least amount of contamination of evidence takes place by these first responders. The path that is established should be done after initial assessment of the crime scene to determine the best route for first responders to take which can ensure they are able to help the victims, minimize any risk to their safety, and limit contamination of the evidence.

SITE OF BOMB BLAST

Stage 2 – Safety Clearance

Once the crime scene has been secured and cordoned off in the prescribed manner and has been evacuated of al casualties the second stage is to make sure that the scene is cleared against any secondary explosive devices. This

phase is obviously working in paral el to the first as any terrorist incident requires immediate actions to avoid any further damage. The main responders in this stage include the Bomb Disposal Unit. The Bomb Disposal Unit’s officials are trained to recognize IEDs and their components including switches, cords, timers and circuit boards, as most unexploded IEDS might not even look like bombs and this is a serious hazard to those in the vicinity of the crime scene. They must be equipped with the requisite personal protection gear (anti-bal istic helmet and bul et proof vest) along with other technical equipment and communication equipment for instant reporting.

The BDU is expected to first of **al clear the epicenter of the IED explosion** and all those areas suspected to contain any secondary IEDs. The objective at this point is to clear the scene in order to al ow the other responding parties to carry out their duties freely without any risk to harm. The BDU officials must isolate the unexploded device up to safety distances, observe if any chemical materials have been planted with the unexploded IED and diffuse the unexploded IED by the appropriate procedure.

FORM No. 25.39

POLICE DEPARTMENT _____ DISTRICT

FORM TO ACCOMPANY BODY OF INJURED PERSON SENT FOR MEDICAL EXAMINATION

1.	Name of injured or deceased person, parentage, caste, residence and condition of life.	
2.	Sex and supposed age.	
3.	Report of Police Officer :- (a) Description of any injuries or marks of violence received, wounds and bruises, position, length and breadth. (b) Brief report by despatching police officer stating the manner in which the injuries or death is supposed to have been caused. If by poison, the poison suspected to have been used. (c) Date and hour it was administered, and date and hour of commencement of symptoms, the date and hour of death, and the nature and duration of treatment adopted by the police or friends of the deceased.	
4.	Brief report and opinion in simple language dictated by the medical officer and followed by his initials :- (a) as to the means by which the injuries were caused. (b) In the case of injuries, poisoning not causing death, the extent of the injuries or sickness, and, in the latter case, the nature of the poison ascertained or suspected. (c) *In the case of death.* - (1) whether death by violence is ascertained and cause of death and (2) whether death is suspected from poisoning, the poison ascertained or suspected.	

The following kinds of hurts only are designated as 'grievous' as stated in section 320, Indian Penal Code :-

First	Examasculation
Secondly	Permanent privation of the sight of either eye.
Thirdly	Permanent privation of the hearing of either ear.
Fourthly	Privation of any member of joint..
Fifthly	Destruction or permanent impairing of the powers of any member of joint.
Sixthly	Permanent disfiguration of the head or face.
Seventhly	Fracture or dislocation of a bone or tooth
Eighthly	Any hurt which endangers life or which causes the sufferer to be during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits...

The BDU officials should also at this point **document the locations** where the exploded materials have been located.

The BDU officials are responsible to give a clearance to the other responding parties so they know it is now safe to carry out their duties. In addition, they must **retrieve the components of the exploded IEDs** and hand it over to forensic experts for forensic opinion and analysis. Lastly, they must **debrief** the concerned IO and explosive forensic experts upon

arrival as to the precautions they must take and any information that may be relevant to their duties on the scene.

6. INJURED AND DECEASED VICTIMS AT THE CRIME SCENE

I.

INJURED PERSONS

When immediate medical assistance is provided to injured victims at the crime scene, the injured victim is to be sent to a medical officer for medico-legal opinion as per Police Rule 25.19. ‘Injury Statement’ Form 25.39 of the Police Rules is to accompany the injured party and to be fil ed in by the concerned Medical officer authorized to undertake such a medical examination of the victim. Form 25.39 is reproduced below:

II. DECEASED VICTIMS FOUND AT THE CRIME SCENE

33

As per Police Rule 25.33, the fol owing is to be done by the IO when a deceased victim’s body is found at the crime scene:

1. He shal prevent the destruction of evidence pertaining to the cause of death.

2. He shal prevent crowding round the body and the obliteration of footsteps.

3. He shal prevent unnecessary access to the body until the investigation is concluded.

4. He shal cover up footprints with suitable vessels so long as may be necessary.

5. He shal draw a correct plan of the scene of death including al features necessary to a right understanding of the case.

6. If no surgeon or other officer arrives, he shal , together with the other persons conducting the investigation, carefully examine the body and note al

abnormal appearance.

7. He shal remove, mark with a seal, and seal up al clothing not adhering to, or required as a covering for, the body, al ornaments and anything which may have caused or been concerned in the death of the deceased and shal make an inventory thereof.

In the inventory shal be described the position in which each thing was found and any bloodstain, mark, rent, injury, or other noticeable fact in connection with such thing. The number and dimensions of such thing. The number and dimensions of such stains, marks, rents, injuries, etc., shal also be given in the inventory.

A counterpart of the mark and seal attached to such thing or to the parcel in which it has been enclosed shal be entered in or attached to the inventory. Such inventory shal form part of the inquest report.

8. He shal take the finger prints of the deceased person if the body is unidentified.

9. The photographing of the body *in situ* and of the scene of the occurrence may prove of great evidential value.

Inquest Report

Once the IO has examined the body and the scene of the crime, he/she shal draw up an Inquest Report in Form 25.35(1) A, B, or C as per his/her assessment of the cause of death:

Form 25.35(1) A to be used for death from natural causes.

Form 25.35(1) B to be used for death by violence.

Form 25.35(1) C to be used for death by poisoning.

The report is made to state the apparent cause of death as assessed by the IO. The fol owing documents wil form part of the Inquest Report in addition to the aforementioned Form:

a. The plan of the scene of death.

b. The inventory of clothing, etc.

c. A list of the articles on and with the body, if the body is sent for medical examination.

d. A list of articles sent for medical examination, if any.

A copy of the report shal be entered into Register No. VI (Miscel aneous Register) maintained by the Police Station.

The Inquest Report is to be submitted to the concerned superior officer of Police for onward submission to the concerned Magistrate.

Post-mortem Examination

In cases of unnatural deaths the Police are to send the body to the nearest authorized medical officer for postmortem examination. As per Police Rule 25.37 the IO shal fil out Form 25.39(1) (see Form above) after his/her examination of the body and send that for medical examination along with the body. Additional y, the IO wil also 34

send any clothing found on the body, foreign matter adhering to the body and any instrument likely to have caused death remaining in the wound or on the body shal be sent with the body.

Police Rule 25.37 also mandates that two police officers who have seen the dead body in the position in which it was first found and are competent to detect any attempt at substitution or tampering shal hand over the body to the medical officer conducting the post-mortem examination.

Form 25.35(1) B is reproduced below:

35

FORM No. 25.35(1)(B)

DEATH REPORT :- UNNATURAL DEATH BY VIOLENCE

DEATH REPORT No. _____ POLICE STATION _____

Dated _____

1. Name of place where the death occurred or where body was found (state which).

2. Distance and direction from police station in whose jurisdiction it is.

3. Date and hour of discovery of the death.

4. Names, parentage and residence of two or more persons who identify the body as that of the deceased person named in the report.

(**Note.** - Relations of the deceased or two respectable witnesses to identification should be obtained, if possible)

5. Name, parentage, caste, residence and condition in life of the deceased.

6. Age and sex.

7. Condition of the clothes, ornaments, & c., and marks of either having been forcibly removed or of being stained with blood or other matter.

(Note. -If the Civil Surgeon or other Medical Officer is expected to attend to examine the body this information should be filled in so far as can be seen and without touching or removing any clothes, and in such case it should be completed after he has finished his examination of the body)

8. Position of the limbs, eyes and mouth.

9. Expression of the countenance.

10. Injuries or marks of violence the body may have received.

Wounds and bruises. - Show position, length and breadth.

(**Note.** - *Not depth. Be careful not to probe wounds.*

If the Civil Surgeon or other Medical Officer be expected to attend to examine the body, this information should be filled in after he has completed his examination)

11. Blood, liquid or clotted ? Where oozed from and to what amount ?

12. In what manner or by what weapon or instrument such marks of injuries or of violence appear to have been committed ?

13. Was there any rope or other article round the neck, or any mark of ligature on the neck ?

14. Had such rope or article apparently been used to produce strangulation, and, if the body had been suspended by it, could it probably have supported the body ?

In what mode was the either end of the rope attached to the support ?

15. Where there any foreign matters, such as weeds, straw &c., in the hair or clenched in the hands of the deceased, or attached to any part of the body ?

16. Is the body well nourished and vigorous or emaciated and feeble ?

17. Is it stout, thin, or decomposed ?

18. Height by measuring from head to feet.

19. Distinguishing marks - *Position and appearance of moles, scars, & c.*

20. Apparent cause of death.

To be made out on separate sheets of papers

21. Are there any circumstances or rumours tending to show that deceased killed himself

22. Description of each article found on body (to be labelled and sealed).

23. Description of each article found near body (to be labelled and sealed).

24. Sketch plan of the place where body was found.

25. Signature of two or more respectable inhabitants present at investigation and of investigation officer with date and place of signing.

7. VICTIM AND WITNESS STATEMENTS

36

One of the most important duties of an IO arriving at the Crime Scene is identifying witnesses and taking their statements. Witnesses can be anyone who has observed the occurrence of the offence or some other related fact.

Statements by victims and witnesses are crucial to investigations and it is, therefore, vital that the IO clearly identifies relevant witnesses and documents their statements. For a detailed discussion on this subject please see Chapter 9 on Witnesses and Witness Statements.

8. FINDING PHYSICAL EVIDENCE AT THE CRIME SCENE

I.

TYPES OF EVIDENCE AT THE CRIME SCENE AND THE SIGNIFICANCE OF EVIDENCE COLLECTION

OBJECTS

BODY MATERIALS

IMPRESSIONS

Weapons

Blood

Fingerprints

Tools

Semen

Tire tracks

Firearms

Hair

Footprints

Displaced furniture

Tissue

Palm prints

Notes, letters or papers

Spittle

Tool marks

Bul ets

Urine

Bul et holes

Vehicles

Feces

Newly damaged areas

Cigarette/cigar butts

Vomit

Dents and breaks

II. SEARCHING FOR AND IDENTIFYING PHYSICAL EVIDENCE AT THE CRIME SCENE

IO’s must careful y examine each crime scene for physical evidence which may have some bearing on the investigation and ultimately the trial of the accused. The aforementioned types of physical evidence are not exhaustive

and the IO must be careful to ensure that he/she assesses al potential pieces of evidence and rules out only those which would not have a bearing on the case. Some pieces of evidence may be hidden from plain sight and therefore IO's are recommended to undertake a thorough search of the crime scene to locate valuable evidence. It is vital y important to conduct the search careful y as important evidence could be damaged if caution is not adopted.

The fol owing are some methods of search[32] which may be adopted in different cases based on the available persons and resources:

a. Strip or Lane Search Method:

This method is used for covering large or open areas. Persons conducting the search wil line up shoulder to shoulder or at an arm's distance from each other and move across the crime scene in straight lines at the same time. Once a piece of evidence is found, the concerned person wil cal the IO and inform him/her of the discovery for col ection. This method is il ustrated here.

32 Methods of Search of Crime Scene adapted from Barrister Abdul Khalique Shaikh (PSP) and Muhammad Akbar (PSP, QPM, PPM) 2014. 'Basic Investigation Handbook'. Paramount Books (Pvt.) Ltd. Karachi. pg. 63-66.

Distance:

Arm’s

Length

b. Grid Search Method:

A Grid Search is a more thorough version of the Strip or Lane Search. Once the search team conducts the search on one axis e.g. North-South, they wil then do another sweep of the area on a different axis e.g.

East-West as il ustrated below:

GRID SEARCH METHOD

Search on Axis 1: North-South

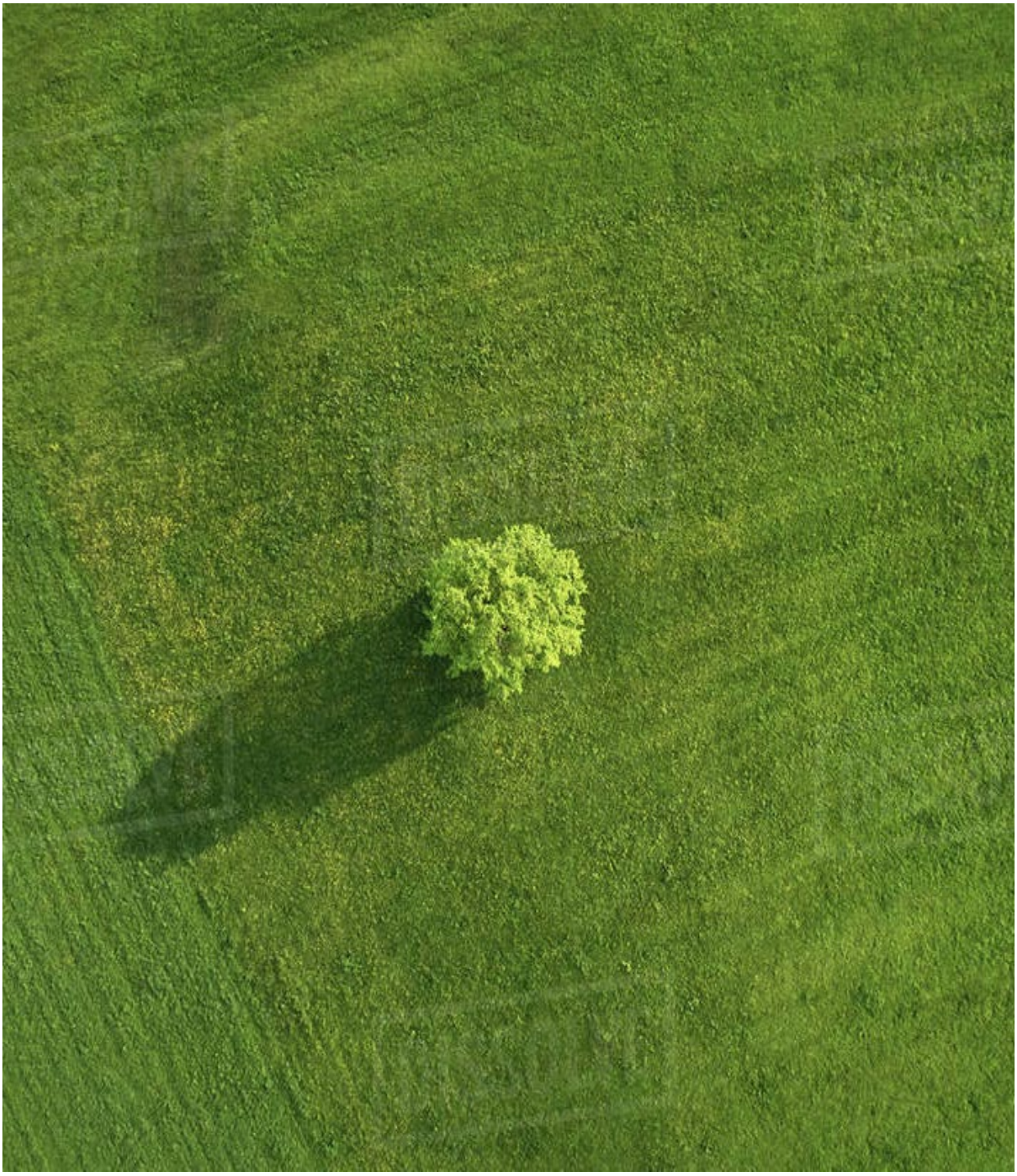
Search on Axis 2: East-West

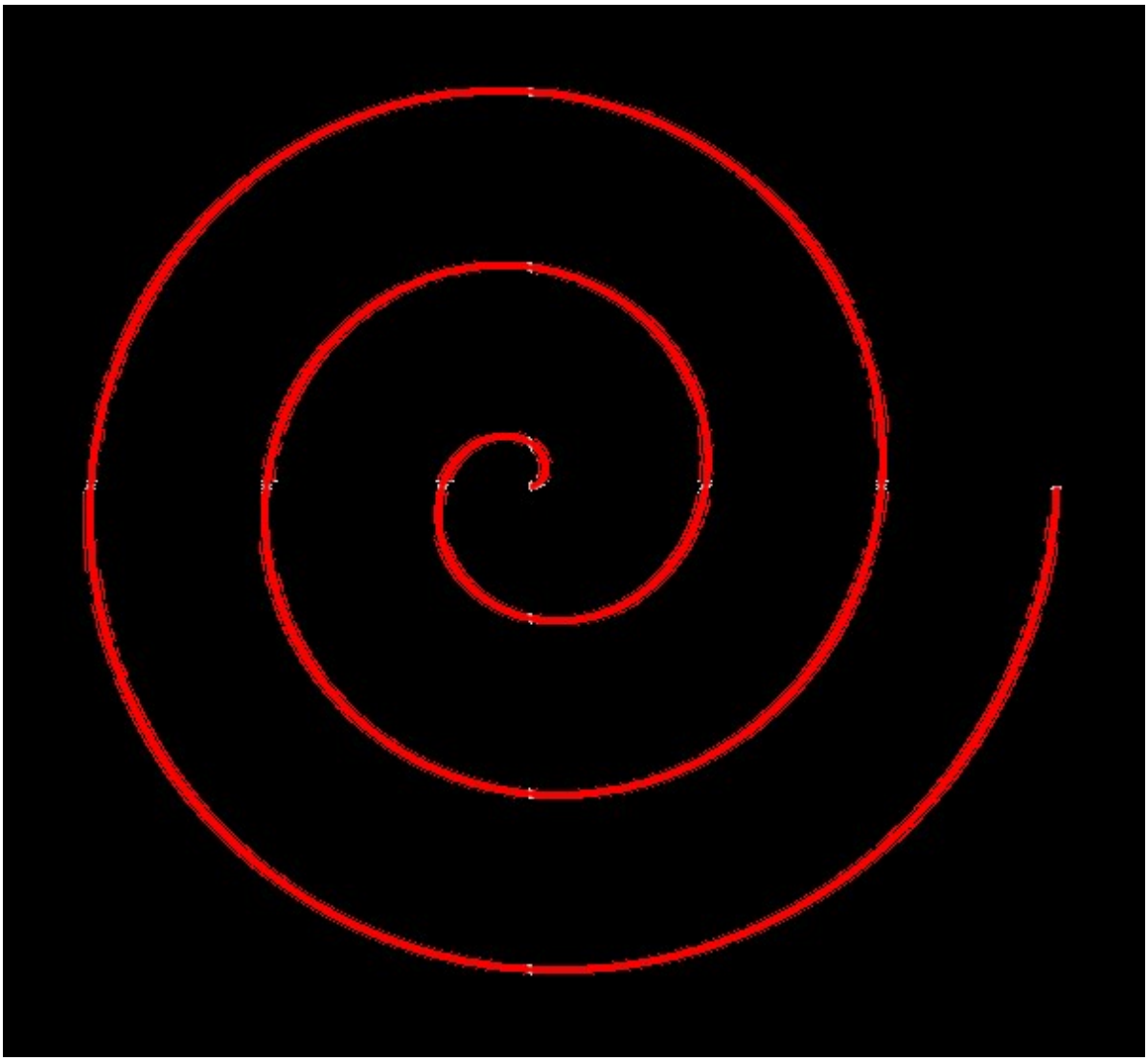
c. Zone or Sector Search Method:

[redacted]

[redacted]

[redacted]





The Crime Scene is divided into zones or sectors. Each person involved in the search is assigned a sector or zone to search. The zones can then be searched by other officers to ensure a thorough search.

Zone 1

assigned to

Zone 4

Officer ‘Z’

assigned to

Officer ‘W’

Zone 2

assigned to

Officer ‘Y’

Zone 3 assigned to

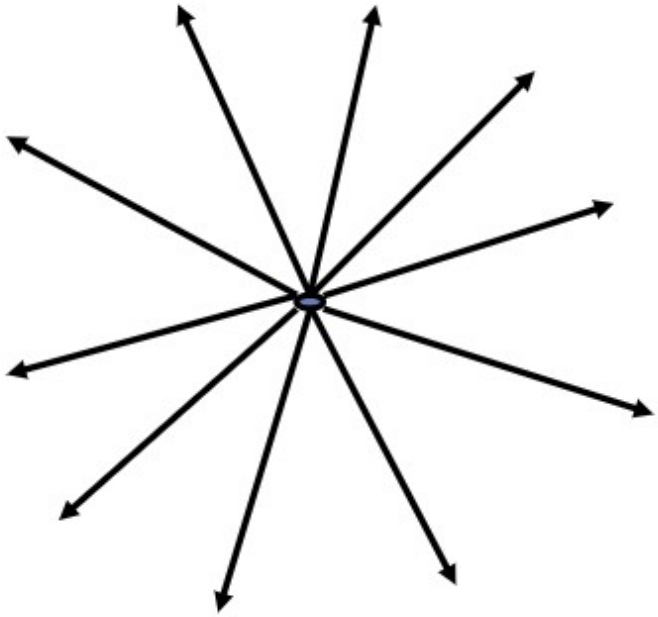
Officer ‘X’

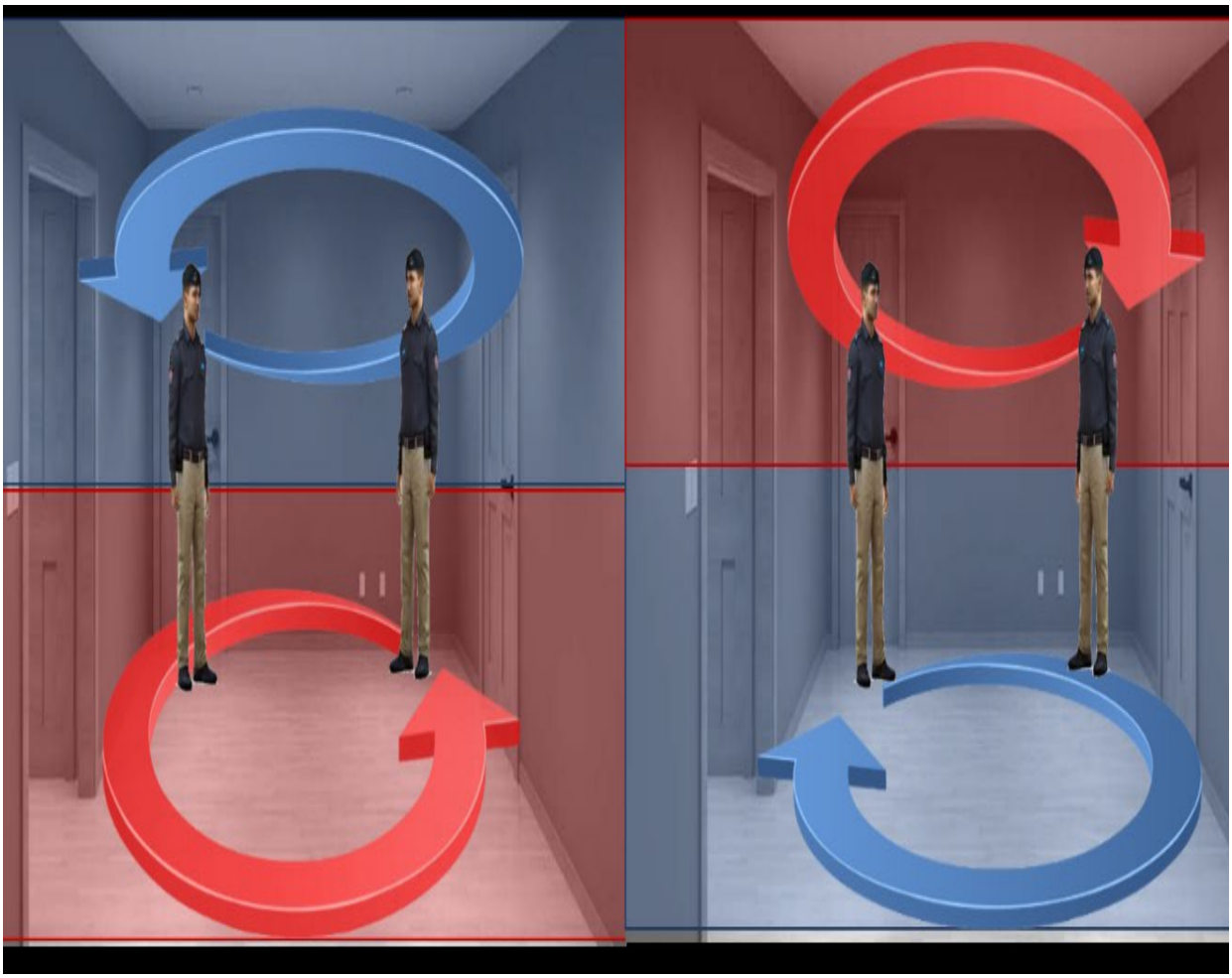
d. Spiral or Circular Search

This method is primarily used for outdoor crime scenes and involves the IO going from the outside of the perimeter of the crime scene inwards towards the center in a circular path. This is il ustrated below: **Start Point**

End Point

e. Clockwise – Counter-Clockwise Search Method:





This method is primarily used for indoor searches. It requires that two officers conduct the search together.

The first officer moves in a clockwise direction around the crime scene searching for evidence above waist height and to the ceiling. The second officer would search counter-clockwise for evidence below waist height and to the floor. Once the officers pass each other, they wil reverse roles and repeat the process.

f. Wheel Search Method

This method is used at the crime scene when an investigator needs to search deeply and thoroughly. This method is very effective for blast or exploded crime scenes where hundreds of things are shattered into pieces. An investigator needs to establish a focal point with close cordon then develop many zones in the surrounding area with an outer cordon in wheel shape.

9. COLLECTING PHYSICAL EVIDENCE FROM THE CRIME SCENE

Once physical evidence is identified, it is the duty of the IO to col ect it in the proper way to ensure it can be analysed by the concerned agency or expert. In some cases specialist Crime Scene Units are brought in to col ect the evidence.

These Units are special y trained and equipped to col ect, package, label, and transport physical evidence from the crime scene. However, such specialists may not always be available and not al cases wil require their involvement.

It is, therefore, necessary that the IO has a strong understanding of how to collect, package, label, store, and transport physical evidence from the crime scene.

I.

INVESTIGATION KIT

As per Police Rule 25.58, IOs are to be provided with an investigation kit which should consist of the fol owing: 1. One bottle of grey powder.

2. One bottle of graphite powder.

3. One camel hairbrush.

4. Folien paper

5. Finger-print forms.

Finger-print Material

6. Finger-print ink.

7. Appliance for finger-printing dead bodies.

8. One magnifying glass.

9. One fingerprint impression pad and rol er.

10. One electric torch.

11. One knife.

12. One pair of scissors.

13. One measuring tape 60’ long.

14. One foot-rule 2 feet long.

15. Sealing wax and candles.

16. Formalin diluted to 10 per cent together with chloride of lime to counteract decomposition of corpses.

17. Cotton wool and 1.5 yards cloth for packing exhibits.

18. Case diary book with plate, pencil or pen, carbon paper and the usual forms required in investigation.

This kit may be used to col ect most types of evidence. However, it is to be noted that with advancements in forensic science, special types of col ection tools and packaging material may be needed to col ect certain types of physical evidence from the Crime Scene. Crime Scene Units, where operational, have such tools and the necessary packaging materials. It is, therefore, better to al ow the specialists to col ect such types of physical evidence wherever possible.

II. COLLECTION AND PRESERVATION OF FINGERPRINTS

The use of fingerprints in the identification of criminals is the most frequently applied technique in forensic science.

Fingerprints offer a powerful means of personal identification and stil remain the most commonly used forensic evidence worldwide.

Types of fingerprints

There are three types of the fingerprints:

Patent Fingerprints

The Patent Fingerprints are visible prints that occur when a foreign substance on the skin of a finger comes in contact with the smooth surface of another object. These prints leave a distinct ridge impression that is visible with the naked eye without technological enhancement of any kind. The tried and true “blood on his hand”

evidence is an example of patent prints recovered from a crime scene. These foreign substances contain dust particles which adhere to the ridges of the fingers and are easily identifiable when left on an object.

Latent Fingerprints

The Latent Fingerprint impressions are secreted in a surface or an object and are usual y invisible to the naked eye. These prints are due to perspiration caused by sweat pores found in the ridges of fingers. When fingers 41

touch other body parts, moisture, oil and grease adhere to the ridges so that when the fingers touch an object, such as a lamp, a film of these substances may be transferred to that object. The impression left on the object leaves a distinct outline of the ridges of that finger. These fingerprints must be enhanced upon col ection and, because they serve as a means of identifying the source of the print, they have proven to be extremely valuable over the years in the identification of its source.

Plastic Fingerprints

Plastic Fingerprints are visible, impressed prints that occur when a finger touches a soft, mal eable surface resulting in an indentation. Some surfaces that may contain this type of fingerprint are those that are freshly painted or coated, or those that contain wax, gum, blood or any other substance that wil soften when hand held and then retain the finger ridge impressions. These prints require no enhancement in order to be viewed, because they are impressed onto an object and are easily observable.

Procedures for processing, developing, lifting and labeling fingerprints[33]

In general, the fol owing basic guidelines for lifting fingerprints are to be noted:

•

Apply a smal amount of fingerprint powder to the brush.

•

Hold the brush lightly.

− Use short quick strokes with the tip of brush light over the surface.

− When latent prints develop – stroke tip of the brush in direction of ridges.

− Latent fingerprint powder is distributed evenly and smoothly by tip of the brush.

− When latent print is ful y visible – brush away excess powder.

− Use contrasting latent print powder (light surface use dark powder).

− Place latent fingerprint lifting tape completely over latent print and smooth out any air bubbles.

− Lift the tape from the surface and adhere to a latent lift card.

− If black powder is used, then a white latent lift card should be used.

− Document the fol owing information on back of the latent lift card

i. offense/case number,

i . lift number,

i i. location where latent lift was recovered, date, time,

iv. officer making the lift.

Latent fingerprints that are recovered from any crime scene wil be forwarded to the forensic science agency for comparison and analysis.

Col ection guidelines for patent fingerprints

Patent prints are col ected using a straightforward method i.e. photography. These prints are photographed in high resolution with a forensic measurement scale. Investigators can improve the quality of the images by using a low-angle or alternate light sources and/or certain chemicals or dyes during photography, but this is usual y not necessary. [34]

33 https://www.salisbury.edu/police/Written_Directives/Chap83.pdf

34http://www.forensicsciencesimplified.org/prints/Fingerprints.pdf.

COLLECTION OF PATENT PRINTS

PRECAUTIONARY MEASURES

MEASURES TO AVOID

• For visible prints on smal objects, such as a • Avoid pressing or touching the impression with your window pane, col ect the entire object.

finger or any object to see if the substance is dry or

• If the item is too large to submit, such as a

tacky. Doing so may damage the print.

bloody patent print on a wal , it may be • Unnecessary transportation and handling may necessary to cut out a section of the wal with

damage or even destroy a print(s).

the patent print.

• Be sure to leave a reasonable amount of wall

surface material surrounding the patent print.

• A protective covering may be placed over the

print provided that the covering does not come

into contact with the print.

− example: If the print is on a door, a small

paper box can be taped to the door, over

the print for protection.

• Photographs are important because damage to

the impression may occur during attempts to

remove the surface containing the print.

Col ection guidelines for latent fingerprints[35]

In many instances, latent fingerprints can and should be developed at the crime scene by evidence technicians or crime scene search officers. Latent prints developed through traditional powder processing methods should be lifted and submitted to the laboratory. Detailed information concerning the case, date, location and orientation of the latent should be recorded on the back of the lift card.

If latent prints at a crime scene appear to be visible (patent prints), or if the lift process may pose unique chal enges, the latent should be photographed. However, if any item of evidence is to be submitted to the lab for processing, it is best not to attempt any field recovery of latent prints.

ITEM

METHOD

Non-porous or non-absorbent surfaces General y, fingerprint powders should be used. Black powder is (Glass, Metal, Tile, etc.) may be preferred because it produces the best ridge reproduction and is easier processed in the field.

to compare. For powders to be used, the surface must be dry. Wet items

should be fully air-dried.

Reminder:

Whenever possible, non-porous items should be processed at the crime

scene and the processed latent print(s) should be lifted, provided no

other evidence (hair, fibers, blood, etc.) is present.

35 PFSA Guide. https://pfsa.punjab.gov.pk/guidelines_for_evidence

Measures to Avoid: Unnecessary transportation and handling may damage or even destroy a print(s). In some cases, Cyanoacrylate Ester (commonly referred to as Super Glue Fuming) may be considered. This technique has proven successful in developing latent prints on items such as plastic baggies, Firearms, Styrofoam, and some types of leather.

Porous or absorbent surfaces (Paper, General y, a variety of chemical processes are available. The Untreated Wood, Cardboard, etc.)

photography of chemical y developed latent prints is essential. Prints may fade or even completely disappear from the surface.

Examples of Chemical Processes:

Cyanoacrylate Ester, Ninhydrin, Physical Developer, Amido Black.

Dry Paper

Dry paper items can be col ected and placed into plastic check (document) protectors or plastic bags (zip-lock).

Wet Paper

Wet paper items should be air dried and once dried can be packaged.

Additional Notes

● Identifiable prints have been developed on items that have been exposed to water.

● Care should be taken when handling these items.

● Avoid excessive amount of handling, even when wearing vinyl or cloth gloves. Glove marks can develop with certain processes.

III. DOCUMENTS AT THE CRIME SCENE

At times valuable evidence can be obtained from documents that may be found at the crime scene or elsewhere. In such cases the fol owing measures ought to be taken by the IO.

Appropriate measures to be taken by the investigation team in the col ection and preservation of documents SR.

APPROPRIATE MEASURES

REASONS FOR APPROPRIATE ADDITIONAL COMMENTS

MEASURES

1

Do not mark the document.

Markings destroy some of the

Investigating officers should

identifying evidence original y

not write upon any

2

Do not write upon documents present in the document for

documentary evidence

example, the investigating except possibly as a means of

3

Do not use pencils, pens,
officer may underline a text
subsequent identification of
dividers, or erasers and
for emphasis. This may be
the document. In such cases
pointers.
confused with similar marks
the identification marks
made by the accused in the
should be restricted to initials
document.
or numbers placed in a corner
If these marks are placed on a
on the back of the document.
document which later is to be
introduced as court evidence,

the fact that the document is
marked might, in some

instances, prevent or hinder

its admission in

the court.

4

Keep documents in envelopes This is important to prevent

The ideal envelope or

or protective folders

contamination of the covering should be heavy

document. Folding the weight, transparent, and

document may cause the ink

made of cellophane.

on it to smudge or cause a

Documents to be filed should

crease in the document always be unfolded and

making the writing il egible.

placed in protective

Furthermore, a fold can also

envelopes or folders and

lead to a tear in the should be clearly marked so

document.

that the contents are easy to

decipher.

5

Keep dry and away from This is important as The possible effects of

excessive heat and strong exposure to heat and strong

moisture and heat should

light.

light may cause alterations

always be given special

or changes to the consideration whenever an

documents.

investigator is storing

documents for some length of

time. Storage spaces that are

unusual y damp or warm

should not be used.

6

Take documents to laboratory This is important because the

If an anonymous letter or a

or an expert without delay.

document should be
piece of writing is found with
examined in its most original
fingerprints, the document
state as soon as possible.
ought to be brought to the
laboratory unopened.
Moreover, a copy of the
document may be made for
purposes of further
investigation. Latent
fingerprints on paper become
indistinct or disappear entirely
within a very short time, hence,
evidence should be brought to
the laboratory immediately
upon receipt.

Practices to avoid in relation to documents at the crime scene

PRACTICES TO AVOID

ADDITIONAL COMMENTS

45

1

Do not mutilate by Documents which are subject to laboratory examination should not be

squeezing, repeatedly

creased or folded.

folding, cutting, or tearing.

If a document is subject to a tear, the investigator should not attempt

to mend it himself, but should let the laboratory examiner repair it.

Under no conditions should a document be pasted on another sheet of

paper or cardboard in order to repair a tear or to strengthen a fold.

2

Do not carry the document Documents that are carried in the investigator's pocket often become in a pocket for a prolonged worn, frayed, and dirty leading to mild destruction of evidence.

period of time/ make copies Since Art. 76 of QSO al ows admissibility of secondary documents, it is of the documents for strongly recommended that copies of the primary document are made referral and subsequent if the investigation is subject to extension. Officers should file or store usage

documents at their headquarters if the documents are not needed

during the investigation.

These rules are primarily intended for the handling of questioned documents, such as handwritten or typewritten material about which there is some question concerning the author or manner of execution. However, they apply

equal y well to the preservation of specimens which are to be used for standards in handwriting and typewriting comparisons (i.e., specimens of handwriting or typewriting, the authorship of which is already established or admitted). In fact, any piece of handwriting, typewriting, or printing which might conceivably form a link in the chain of circumstantial evidence surrounding an investigation should be given the same care as documents whose importance is already known and recognized.

IV. DIGITAL EVIDENCE AT THE CRIME SCENE

Digital evidence includes evidence that can be extracted from mobile phones, SIM cards, computers and other digital devices or audio and video devices. The Qanoon e Shahadat Ordinance (QSO), Art.164 states that information may be extracted from modern devices, if the court deems it appropriate. Along with audio visual evidence, this provision extends to include cel ular devices, computers and various other modern techniques or devices that could be used for digital storage. Evidence samples of this sort are col ectively referred to as digital evidence.

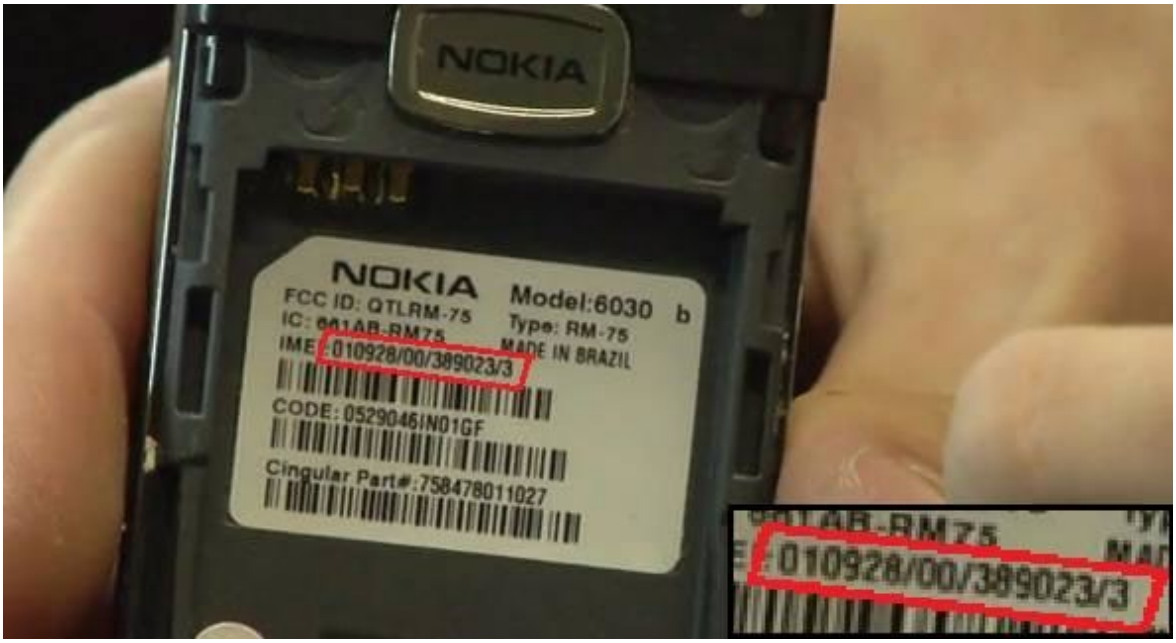
According to the U.S. Department of Justice (National Institute of Justice), ‘Digital evidence is information and data of value to an investigation that is stored on, received, or transmitted by an electronic device. This evidence is acquired when data or electronic devices are seized and secured for examination’

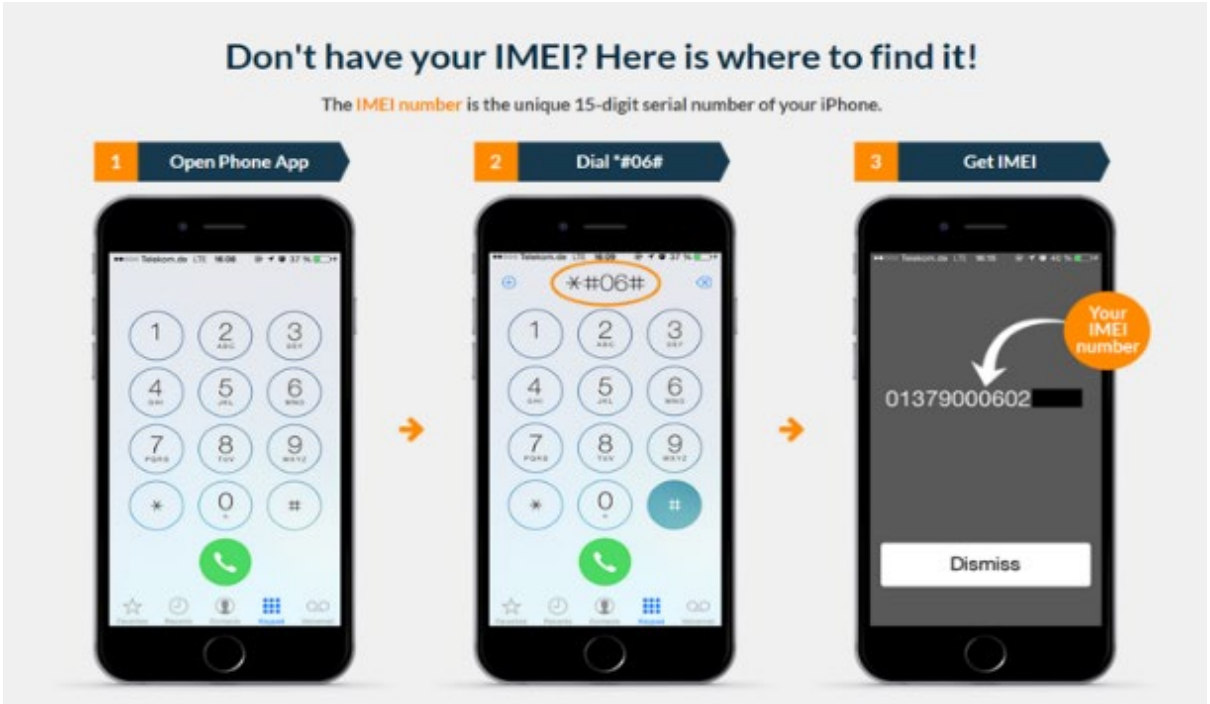
1. Cellular Devices

Mobile phones, handheld devices and SIMs (Subscriber Identity Modules) fal under cel ular devices and can be extremely crucial to investigations in the modern day.

To aid investigation processes, the National Action Plan instituted a SIM Verification System in col aboration with the National Database & Registration Authority and the Pakistan Telecommunication Authority. The SIM verification was a technique used to trace and identify suspicious terrorist activities. According to DG FIA Ammar Jafri, *‘keeping in view the fact that criminals in every society take advantage of technological advancements, registration and regular documentation of SIMs has become*

a priority for good governance in all countries'[36.]Moreover, the Investigation for 36 'National Action Plan: 53 million SIMs verified via biometric system', Express Tribune, 2015




Don't have your IMEI? Here is where to find it!
The IMEI number is the unique 15-digit serial number of your iPhone.
1 Open Phone App
2 Dial *#06#
3 Get IMEI
*#06#
Your IMEI number
01379000602
Dismiss

Fair Trial Act 2013 al ows issuance of warrants for intercepting digital and cel ular communication because terrorist communication often takes place digital y and thus these communication devices have become important to monitor.

2. Mobile Phones/Handheld devices

Storage

Phones (especially smart phone) have mass storage capacities and can contain various mediums of information.

Memory cards can be taken from phones and analyzed to detect various patterns.

International Mobile Equipment Identifier (IMEI)

IMEI history shows how many SIMs were used in a particular handset. Details such as when, where and for how long these SIMs were used may also obtained if the IMEI is identified. This is given at the back of a phone or can be found out as below.

Significance

Devices may contain records like text messages, emails, internet history, images, videos and cal data. These records can play an instrumental role in tying a suspect to the crime. Similarly, discovering a device and examining its contents is useful for creating a profile for a suspect thereby making identification of the suspect easier.

3. Subscriber Identity Module (SIM)

Cal Data Record (CDR**)**

CDR reveals details of cal s made using the SIM. (How many, to whom, what times, how long the cal s were, etc.) 47

IMSI and MSISDN

IMSI (International Mobile Subscriber Identity) is the number often printed on the SIM. The MSISDN (Mobile Systems International Subscriber Identity Number), simply put, is the number that is used to connect a cal to the mobile phone (Cel number). Both numbers put together are used to identify a mobile phone. ‘The IMSI number col ected from SIM cards helps the forensic investigators to identify the nationality and preferred language of the suspect. In addition to this, the figures under the MSISDN assist in identifying the cal s and simultaneous contact numbers that connected to the cal s’.

LAC number and CELL ID

LAC (Local Area of Coverage) is the number of a specific area from which a mobile is communicating.

Cell ID is the shortest area of coverage of a mobile. Both can be obtained from the network providers of the SIM

discovered. These together can help in determining a location of the mobile phone.

Significance

SIMs that seem suspicious can be traced back to the person under whose name the they are registered. Additional y, SIMs give us various other tools that can be used for positioning and locating their area of usage (using the LAC and Cel ID). Obtaining cal data records (CDR) from the phone or SIMs

can be useful in placing the accused at the scene of the crime during the time at which it was committed.

However, CDR and information about SIMs might not be very fruitful in some cases, considering that often SIMs are not registered under the name and CNIC of the actual user. However, where it is certain that a particular SIM is being used by a suspect in a case, then the CDR and other information can be invaluable.

4. Computers and other Storage Devices

Much like Cel ular devices, computers and other storage devices can be used to establish Mens Rea in a terrorist attack.

CD/DVD, Mass Storage Devices (Flash Drives, USB etc.)

Significance

These may contain information such as e-mail messages, Internet browsing history, Internet chat logs, photographs, image files, databases, financial records, and event logs that can be valuable evidence in an investigation or prosecution.

Example:

In the child pornography case in Kasur (2015), hundreds of videos were discovered where children were being filmed as they were raped or sexual y abused by grown men. The videos of the children were admitted into evidence for the trial of the accused in the ATC. They were used to establish the occurrence of the crime.

Computers and files, Internet/Browser History

Significance

This may include software, documents, photos, image files, e-mail messages and attachments, databases, financial information, Internet browsing history,

log files, event and chat logs, and data stored on external devices. The device functions, capabilities, and any identifying information associated with the computer system; components and connections, including Internet protocol (IP) and local area network (LAN) addresses associated with the computers and devices; broadcast settings; and media access card (MAC) or network interface card (NIC) addresses may al be useful as evidence.

5. Col ecting, Packaging, Storage, and Transport of Digital Evidence

In order to retain the evidentiary value of evidence, it is essential that evidence remains intact and is not corrupted and is in useable condition. The fol owing steps can be taken to ensure the same:

RELEVANT

GUIDELINES TO FOLLOW

SECTIONS

Preliminary

PFSA

Ensure that al digital evidence col ected is

Do not use the SIM or cel

Steps

Guidelines

properly documented, labeled, marked,

phone of the accused

photographed and inventoried before it is

packed37

Do not show CDR etc. to

any suspect.

The video evidence should be col ected in its

original format as it is recorded on the recording

Avoid altering the

device

condition of the device,

(DVD, VCR, etc.) 38

when found.

The packing environment should have mild

Avoid packaging in UV light

temperature and humidity. An extreme

environment can lead to deterioration of the

condition of potential evidence, for example CD

or Cassette. 39

Packaging

Use anti-static containers

Avoid using material other

Material

than paper, cardboard

Use containers that wil prevent contamination.

boxes and antistatic

materials for packaging

Use shock resistant packaging to avoid damage

Refrain from using plastic

containers

External items

Col ect al power supplies, cables and adapters for

the devices seized

37 PFSA Guidelines: Remember that digital evidence may also contain latent, trace, or biological evidence and take the appropriate steps to preserve it.

38 Audio Visual Analysis, Punjab Forensic Science Agency, http://pfsa.gop.pk/?page_id=18

39 ibid.

Labels and

Label evidence clearly and properly with at least

Seals

the fol owing: 40

• case number

• item number

Seals must display the date when sealed. They

must also be tamper evident. This means that if seals are opened or tampered, it becomes visibly evident.

Copies of video or audio evidence must be made and label ed. These copies can then be utilized at the investigation and prosecution stage. 41

Forensic tapes must be used to seal the evidence

The seals must display the initials of the personnel creating the seal

Storage

Leave mobile devices in the state that they are

Do not Store in an

found i.e. in case where the device is switched on, environment where it should not be switched off or vice versa.

evidence can be exposed

to magnetic fields, dust,

Mobile Devices should be isolated from the

vibration or moisture

Network using Network Isolation Techniques I.e.

Faraday Isolation bags, Radio Frequency shielding

material, anti-static packing and aluminum foils.

Inform the evidence custodian and the forensic

examiner that electronic devices are battery

powered and require prompt attention to

preserve the data stored in them.

Transport

Keep digital evidence away from magnetic fields

Do not leave evidence

such as those produced by radio transmitters,

unattended during

speaker magnets, and magnetic mount

transport.

emergency lights.

Avoid keeping digital

Other potential hazards are any devices or

evidence in a vehicle for

material that can produce static electricity. 42

prolonged periods of time.

Cellular

Take note of the contact list and go through

Devices

messages, images and emails.

40 ‘Collection and preservation of evidence’, George Schiro, http://www.crime-scene-investigator.net/evidenc3.html 41 ibid.

42 Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition, https://www.ncjrs.gov/pdffiles1/nij/219941.pdf 50

Verify if the SIM has been registered and under

what name and place. Also determine where the

SIM was issued and reissued. It is important to

check with records held by the Pakistan

Telecommunications Authority (PTA).

Also take note of whether phone credit was

transferred or shared to a suspicious SIM.

Materials and

• Cameras (photo and video).

tools for

• Cardboard boxes.

col ection

• Notepads.

• Gloves.

• Evidence tape.

• Paper evidence bags.

• Evidence stickers, labels, or tags.

• Crime scene tape.

• Antistatic bags.

• Permanent markers.

• Nonmagnetic tools

• Faraday Bags[43]

V. DNA

DNA – Use and Value

Deoxyribonucleic Acid (DNA) is a hereditary material in al humans and animals. Nearly al cel s in a human body contains the same DNA, which means that often DNA can be traced back to a person. Despite the fact that DNA evidence is circumstantial for the purposes of a criminal trial, in the context of investigations, col ecting DNA can often aid in profiling or even identifying parties involved in an offence, both perpetrators and victims. DNA can be matched to family members to ascertain identity. The same can be achieved by comparing a vile of blood or a strand of hair or even saliva of the family member.

DNA is general y used to solve crimes in two ways:

• In cases where a suspect is identified, a sample of that person's DNA can be compared to evidence from the crime scene. The results of this comparison may help establish whether the suspect committed the crime.

• In cases where a suspect has not yet been identified, biological evidence from the crime scene can be analysed and compared to offender profiles in DNA databases to help identify the perpetrator. [44]

DNA can be col ected from the fol owing samples:

Blood

Hair

Earwax and Mucus

43 Faraday Shield is an enclosure used to block electromagnetic fields. A Faraday shield may be formed by a continuous covering of conductive

material or in the case of a Faraday cage, by a mesh of such materials

44 https://www.justice.gov/archives/ag/advancing-justice-through-dna-technology-using-dna-solve-crimes

51

Sweat

Vomit, urine and faeces

Fingernails

Saliva

Pieces of tissue/skin

Semen

Additional y, these samples can be extracted directly from living persons, dead bodies bodies or from stains (blood, saliva etc.) on clothes, weapons, etc. 45

Factors relating to col ecting dna evidence

Time

DNA sampling and analysis must be done promptly and without unnecessary delay. In Ghulam Mustafa Alias Baggi vs State46 the medical officer, who conducted an autopsy of the body, removed and dispatched body parts to the police. This evidence was to be sent to the Chemical Examiner but the police

dispatched it over a year later resulting in delay and casting doubts in the authenticity of the evidence. The concern here is not that DNA deteriorates quickly (DNA evidence can last a very long time, given proper care is taken to preserve it.) Instead, the rule above is asserted to ensure that delays do not occur between transferring of evidence, as this may lead to tampering and consequently it becomes harder to establish a proper chain of custody.

Contamination

Utmost care must be taken while handling evidence, and each sample must be packaged separately and kept in specific conditions so as to avoid contamination.

Referred Agency

R.25.41 of Police Rules 1934, stipulates that the Superintendents of the Police are required to submit the samples col ected by the IO to the Chemical Examiner. R.25.41 of the Police Rules also specifies detailed instructions related to the col ection that the authorized officer is required to fol ow:

SAMPLE

MATERIALS NEEDED

COLLECTION/PRECAUTIONS

Bodily fluids

• Wide mouthed

• Samples should be placed in bottles or jars

bottles

• Stoppers should be placed on the jars and should be tied

• Glazed jars

down with a leather cloth and must be checked for leaks

• Stoppers/Corks

• Knots of the cord must be sealed with the name seal of

• Boxes

the officer making the investigation

Stains

• Cotton or wool

• Surfaces with stains must be dried before packaging

• Wooden boxes

Blood stained

• Boxes

• Evidence should be marked with seals

Weapons, articles or • Scissors

• And then sealed into parcels

Cloth

• HD Camera

• If the surface is too large to pack in its entirety, the blood

stain portion of it must be cut out with scissors and sent

for analysis

45 https://www.nytimes.com/2010/11/02/science/02qna.html

46 Ghulam Mustafa Alias Baggi vs. State 2014 PCrLJ 893

52

• Al stains should be documented through High Definition

photography

Sharp Weapons

Boxes

Sharp weapons must be packed in boxes, instead of cloth so

weapons do not pierce the packaging

Clods i.e. Earth or

• Wool

• Clods should be packed in wool and then put in boxes

clay

• Boxes

Organs

• Clean glass,

• Organs must be placed in wide mouthed jars and fit with

bottles/jars

the stoppers to ensure that contents do not readily

• Stoppers/corks

decompose.

Materials that may

• Preservatives

• Materials that decompose at a fast rate must be ful y

decompose

• Containers

immersed in the preservative.

(jars/bottles)

• The preservative may be a rectified spirit (in case of

poisoning) or a salt solution.

• Salt solution: 1 Tablespoon of salt and 4 pints of fresh

clean water

Further instructions

•

On each container and parcel, a label must be fixed with a description of the contents; particulars may include:

Date/Time.

Victim’s Name (if applicable).

Location.

Col ector’s Name.

FIR Number.

Police Station Name.

Description of item.

Item number.

•

The jars should be placed in boxes with packaging material to avoid breakages. The boxes are then to be covered with Garha cloth, sewed and sealed.

•

The label should also have a seal; the same which was used in the fastening of the container. Seals should al be similar and the wax should be of the same kind. It should be the ordinary office seal and should be kept under lock and key.

•

A copy of the label should be given in the inquest report or case diary.

•

No letters should be glued on to exhibits that could interfere with the analysis

•

A sample of the preservative added should be kept aside in case the sample container breaks before reaching the chemical examiner

•

If two or more examinations are to take place, then the medical officer should complete one, label and seal it and then only commence with the second examination. Instruments must be cleaned before the examination

VI. BLOODSTAIN PATTERN ANALYSIS (BPA):

Patterns of bloodstains can be used in their entirety to establish the nature of the crime including other elements that can be crucial to an investigation. For example, in a target kil ing, the blood patterns surrounding the area of the victim could indicate the angle at which the bullet hit the target. This could in turn establish the vantage point 53

of the shooter. This location could then possibly be used to trace down the perpetrator of the crime. Facts that can be determined from the BPA are:

•

The origin of the bloodstain

•

The type of weapon used in the violence and hence the cause of the death

•

The direction from which an object struck the victim

•

The relative positions of the victim, assailant and bystanders

•

The locations and movements of the victim and assailant during the attack

•

The number of blows or gunshots the victim received

•

The truthfulness of any suspects and witnesses47

Source of evidence

•

Stains on clothes and articles

•

Stains on large surfaces (furniture etc.)

•

Photographs of fixed surfaces (wal s etc.)

Col ection of evidence from Bloodstains

For DNA analysis and BPA the col ection and preservation is done differently and various rules need to be adhered to.

Wet blood

Stains that are fresh and stil wet decompose quickly, which is why they must be dried before col ection.

Wet blood on a dead body can be wiped with swabs and then dried before submission to the laboratory.

Time

There cannot be any unnecessary delay in the submission of samples to the laboratory.

Police Rules 25.46 establish that the custody of such samples must be sent by the Superintendent of police to the Chemical Examiner, who shal then forward samples to the Serologist who may then determine the source of the blood. The samples must be forwarded with a complete medico history of the case. Experts wil be charged with determining various facts about the crime/incident from the blood splatter stains.

RELEVANT

PRECAUTIONS

STEPS TO AVOID

SECTIONS

Wet Stains

PR 25.33

Dry them before col ection.

Do not col ect them while

Swab them and al ow the swab to air dry. wet.

Then place in envelopes

Do not place swabs in tubes

Stained Clothes or

Submit them to the labs in their entirety

Do not cut pieces from the

Articles

if possible

articles for evidence. Never

fold the articles (this wil alter

the patterns)

Large stained

Cut around the stain, including some

Do not discard the remainder

surfaces e.g.

unstained area around it

of the surface. The

mattress

investigating officer should

keep custody of it. [48]

47 Forensics of Dummies, Doughlas Layel

48 Punjab Forensic Science Agency Guidelines

54

Dry blood on a

Scrape it into an envelope with a clean

Do not attempt to clean the

body

scalpel and send it to the lab.

blood

Alternatively, a swab can be soaked in

sterile water. Swab the dry blood (this

wil moisten it) and al ow the swab to air

dry. Then place in envelopes.

Documentation

Photographs of the stain patterns on larger items must be taken using forensic photography techniques. This is referred to as *Forensic Photography.*

Any visible stain patterns present and any visible damage to fabrics (e.g. cuts, tears, abrasion) must be properly documented.

Label ing

Stitch or tie the label onto the article etc. Avoid pasting the label onto

The label should include the number and the article description of the articles

Labels must correspond with the invoice list of articles

Marking

Mark the article with circles around the stained area. Do not use ink or an indelible pencil to do so

Packaging

Package in clean, paper bags or

Use plastic containers to

envelopes

package blood stained

samples

Documents to

A. By post:

Dispatch

(1) Forward memo and invoice list of

articles for examination.

(2) Impression or imprint of seal used in

the case.

B. With the articles:

(1) Duplicate copy of forwarding memo

and invoice list.

(2) Duplicate impression or imprint of

seal used in the case.

VII. EXPLOSIVES/EXPLOSIVE RESIDUES AND IEDS

Wherever the use of explosives, IEDs or Explosive Residue is suspected, the Police ought to instantly cal upon the Bomb Disposal Unit. However, if there are any traces of explosive evidence, the police may col ect and preserve the evidence as per the procedure laid out in Rule 25.42(2) of the Police Rules. Nevertheless, it is fundamental for the police to have a comprehensive understanding of what constitutes as explosives and explosive residues.

What are explosives, ieds and explosive residue?

55

An explosive is a highly reactive substance that can create a very massive physical impact within a limited area surrounding it. IEDs are improvised Explosive Devices and are the explosives used in unconventional warfare.

Explosive substances include, but are not limited to, bombs and detonators. They can take any form:

•

Liquid e.g. Nitro Glycerine

•

Gas e.g. compressed gases (ammonia, oxygen, hydrogen, acetylene, carbon-dioxide) in cylinders, sparklets etc., may under certain circumstances cause violent explosions

•

Solid:

Detonators

Bombs

Other

Police Rules appendix 25.42(2) describes in detail the different types of solid explosives: **SOLID EXPLOSIVES**

DETONATORS

BOMBS

OTHER

- Detonators and
- Military Grenades
- Blasting explosives e.g. caps
- Copies of military grenades

Dynamite

- Fuses
- Book bombs
- Gunpowder
- Cartridges
- Letter bombs

- Gun cotton
- Fireworks
- Bombs made of soda bottles and jam
- Gun, rifle, shotgun powders
- Rockets

tins

- Fulminates
- Signal Lights
- Picric Acid
- Ammonal and Amatol
-

Chlorate Potash

•

Sulphide of arsenic

•

Carbide

Each substance in the above categories, whether solid, liquid or gas is dealt with differently.

Lastly the Explosive residue is what can be found around an area impacted by a bomb explosion. There are often remnants of the chemicals and fuses used in the manufacturing of the bomb that cause the explosion.

It is also interesting that a lot can be determined from the kind of explosive that is found, or the kind of residue it leaves behind. It is commonplace that terrorist groups tend to have a preference towards a particular kind of explosive. Identifying the type of explosive used, could very well lead to establishing the terrorist or terrorist organization involved. This, however, can only be deduced by experts in the Bomb Disposal Unit, who are in charge of analysis of both live explosives and residue.

In fact, *Sate v. Sarfaraz Khan*, made it clear that the witness testimony of an expert of the BDU is integral to determine the nature of the explosive material used by the terrorist, otherwise the explosive material evidence (held in the report) would be inadmissible in court.

Chain of custody and col ection of explosive evidence

Courts and the law state that explosive substances need to be handed over to the Bomb Disposal Unit (BDU), bearing in mind the rules of col ection and storage elaborated under Appendix 25.42(2) of Police Rules 1934. Whether the substance is explosive or whether it is residue from an explosion, a lot of precaution needs to be taken in any case.

It must also be noted that time is of the essence in this regard. In the *State v. Sadam*[49], the explosive material was analyzed 2 months after the incident which raised questions about the chain of custody.

The Table below highlights Police Rule 25.4 (2) pertaining to the different type of explosive substances. These paras provide detailed instructions on how to handle i.e. col ect the explosive material.

RELEVANT

PRECAUTIONARY MEASURES

STEPS TO AVOID

SECTION

Preliminary Steps

25.42(2)

Assume that the substance is highly Do not let unnecessary

Instructions:

explosive, even if you have the slightest people be in the vicinity

Para 1, 3

reason to believe it is dangerous

LIQUID EXPLOSIVE

In an OPEN vessel

25.42(2)

Dip a pencil or thin piece of stick into the Do not use a glass or

Instructions:

liquid and al ow one drop to fal on a smal metal stopper to cork the

Para 6

piece of blotting paper or tin foil (silver bottle

paper).

Distance this ten yards or more

from the vessel containing the liquid, place it

upon a flat surface and strike it with a sharp

glancing blow and a flat headed hammer.

Repeat 3 times with fresh drops.

Also test it with the flame of a spirit lamp.

IF IT EXPLODES or BURNS:

Place ½ ounce of the substance in a clean

bottle and cork it up tightly. Pack it in cotton

wool and send to the (Bomb Disposal Unit) by

messenger.

IF IT DOES NOT EXPLODE or BURN:

Repeat the above process, and send to the

Bomb Disposal Unit via post.

In a CLOSED vessel

25.42(2)

1. If vessel is closed lightly and the stopper Do not attempt to

Instructions:

comes out, proceed as you would with an remove the stopper.

Para 7

open vessel

Do not turn the vessel

2. If vessel is closed very tightly, send it by over when removing it.

messenger to the Bomb Disposal Unit.

Use minimal force

3. If vessel is not a bomb and is made of metal

or another hard material and it is believed

that the vessel might open with moderate

49 *State vs. Sadam* (2016 PCrLJ 1815)

57

force, then it should be removed VERY careful y. The vessel is to be taken to an area where it can do minimal damage (field). Tie a chord to it and loop it around a tree or structure. Pull the chord creating a back and forth motion, which wil shake the vessel, disturbing the contents. Leave it for 12 hours. If there is no explosion send it by messenger to the Inspector. If it is too large to move, keep it in a secure space and send the report to the BDU.

GAS EXPLOSIVE

Storing

25.42(2)

Keep the substance cool and away from the

Instructions:

direct rays of the sun

Para 11

Packaging and

25.42(2)

Should be sent by train to the BDU.

Transport

Instructions:

Para 11

Smal cylinders with gas can be packed in

cotton wool and wooden boxes and be sent

by post

SOLID EXPLOSIVE

In an OPEN Vessel

25.42(2)

With a flat stick or cardboard take out a few If after adding some of

Instructions:

grains of the substance. Distance this ten the substance to water it

Para 8

yards or more from the vessel containing the reacts, (Condition 1)

liquid, place it upon a flat surface and strike proceed as you would

it with a sharp glancing blow with a flat before, however DO NOT

headed hammer. Repeat 3 times with fresh place it in water before drops.

packing it. Keep the

substance completely

Also test it with the flame of a spirit lamp.

dry.

1. IF IT EXPLODES or BURNS:

Take a little bit of the substance and add it to

water. If it emits no gas or heat, then place ½

ounce of the substance in a clean bottle, fil it

with water and cork it up tightly. Pack it in

cotton wool and send to the BDU via a

messenger.

2. IF IT DOES NOT EXPLODE or BURN:

Test the substance in water as before, Repeat

the above process, and send to the BDU via

post.

In a CLOSED Vessel 25.42(2)

1. If it is not suspected of being a bomb and 1. Do not attempt to

Instructions:

the stopper is tightly put, pack it in straw

remove the stopper or

Para 9

58

(keeping it upright) then send it by

whatever is keeping the

messenger to the BDU.

vessel closed

2. If the stopper seems as if it wil come out

3. Do not turn the vessel

with little force then proceed as you would

over when removing it.

for an open vessel

Use minimal force

3. If vessel is not a bomb, is made of metal

or another hard material and it is believed

that the vessel wil open with moderate

force, then it should be removed VERY

careful y. The vessel is to be taken to an

area where it can do minimal damage

(field). Tie a chord to it and loop it around a tree or structure. Pul the chord creating a back and forth motion, which should upset the vessel. Leave it for 12 hours. If there is no explosion send it by messenger to the Inspector. If it is too large to move, keep it in a secure space and send a report to the BDU.

Calcium Carbide or 25.42(2)

Destroy it by dropping it into deep water;

Calcium Phosphide Instructions:

not more than a pound of the substance at a

Para 10

time. Wait til no more gas is given off from a pound, before proceeding to destroy another pound.

Detonators

25.42(2)

Pack them separately in cotton wool and

Do not send through

Instructions:

wooden boxes and send it by hand to the

post

Para 12

inspector

Bombs

25.42(2)

A. Military Grenades: See that the safety pin A. Do not attempt to

Instructions:

is in position, that it is not broken or corroded destroy it, if you are

Para 13

and that the ends are wel splayed out so that untrained with explosives

it cannot be jolted out. See that the jaws of

the laver are in good condition and support B. Do not put this type of

the striker correctly. Being satisfied on these grenade in water. If the

points, the base should be unscrewed and, if trigger has been made

the igniter set is present, it should be safe, pack the grenade in

careful y removed. Pack the igniter set and cotton wool and a

the bomb in a cotton wool in separate wooden box and send to

wooden boxes and send by hand to the BDU. the Inspector.

If the pin and lever are missing, the grenade must be destroyed where it was found.

Report to the Inspector.

B. Copies of Grenades/ Crude versions of military grenades: They must only be handled by persons who have handled bombs before. It is general y possible to render them harmless by removing an explosive cap or tuft of gun cotton. This should only be done with if the police officers are satisfied that the trigger is safe.

C. Bombs made from bottles etc.: Arrange a string bag and strong cord over a large bucket of hot water. Careful y remove the bomb keeping it in the same position as found. Place it in the bag. From around the corner of a building, lower the bomb into hot water and leave it there for 24 hours. The water wil then be cold. The bomb can be taken out and

packed in wet straw or cotton wool in a wooden box and sent by hand to the inspector.

D. Book Bombs: Take it to an isolated place, keeping it in the original position. Keep it locked up. Send a report to the inspector.

E. Letter bombs: Place the whole letter in a bucket of water. When the letter is quite wet, pack it in a tin in wet cotton wool and send it by hand to the BDU.

F. Booby Traps: Never enter a house or room in which you suspect is covered with booby traps. First smash a window or knock a hole in the wall with a crowbar opposite the door to see if the door can be safely opened. Enter very carefully. Do not touch anything. Make a loop at the end of long rope and drop the loop over objects that seem suspicious. Try to pull at the objects using the rope and do not enter the house until several minutes pass.

Open lids of boxes and containers that seem

suspicious by using the rope. If you discover

an unexploded bomb, proceed as you would

in case of a **bomb made from Soda bottles in**

para C.

60

EXPLOSIVE RESIDUE

Post explosion

Punjab

Send to the lab so that they can be

debris and

Forensic

examined under the microscope and/or

components (such

Science

extracted for analysis.

as pipe bomb

Agency

fragments, end

Guidelines

Materials that are distinct and easily

caps, plastic

separable should be sent in separate

bottles, paper

containers

tubes, etc...)

For example: the liquid and the foil bal s

from a plastic bottle would be sent as three

separate items: The Bottle, The Foil, and The

Liquid

Containers,

Punjab

Glass jars or paper envelopes or bags can be Metal containers and

Material and Seals

Forensic

used for packing.

some plastic containers

Science

should be avoided.

Agency

Wear nitrile gloves and dispose them after

Guidelines

col ecting a sample and put on fresh ones

before col ecting another sample.

Ensure can lids are tightened

Plastic bags must be heat sealed completely

with no flaws in the seam.

It is of the utmost importance to remember that whenever some quantity of the explosive substance in sent to the Bomb Disposal Unit for analysis, the rest must be kept safe, in an area in order to avoid damage in case of explosion.

VIII. BALLISTICS

Bal istics is the scientific study of the mechanics of launching projectiles, their flight behaviour and the effects of impact of projectiles, especial y those of ranged weapon munitions such as bullets, unguided bombs, rockets, etc.

There are many applications of bal istics within a criminal investigation and the bul ets that are fired at the crime scene wil be examined in the hopes of discovering several pieces of information, such as:

•

The actual bullets can identify what type of gun the criminal used and whether or not the firearm is connected to any other crime (through database matching).

•

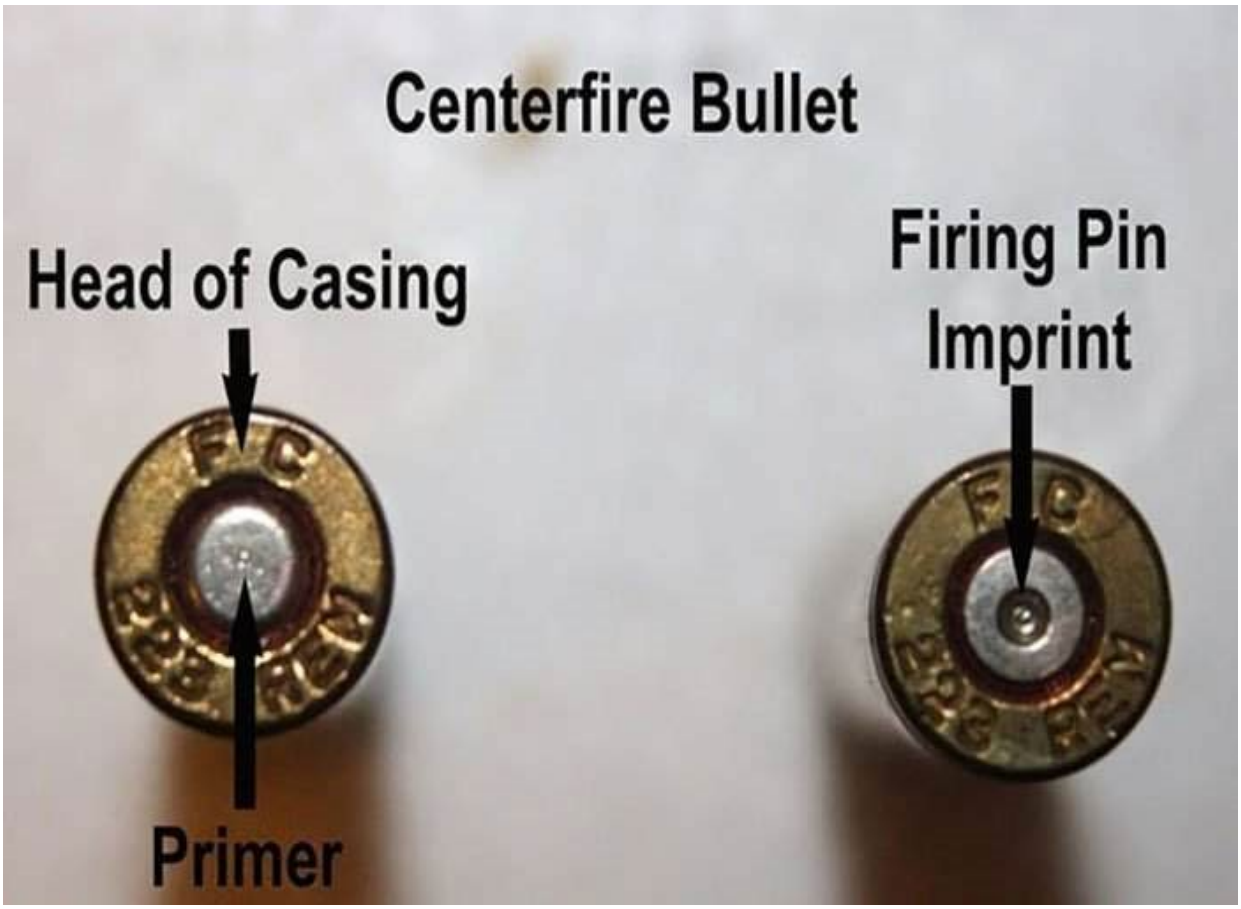
The amount of damage a bullet has sustained upon hitting a hard surface can help determine approximately where the shooter was standing, what angle the gun was fired from, and when the gun was fired.

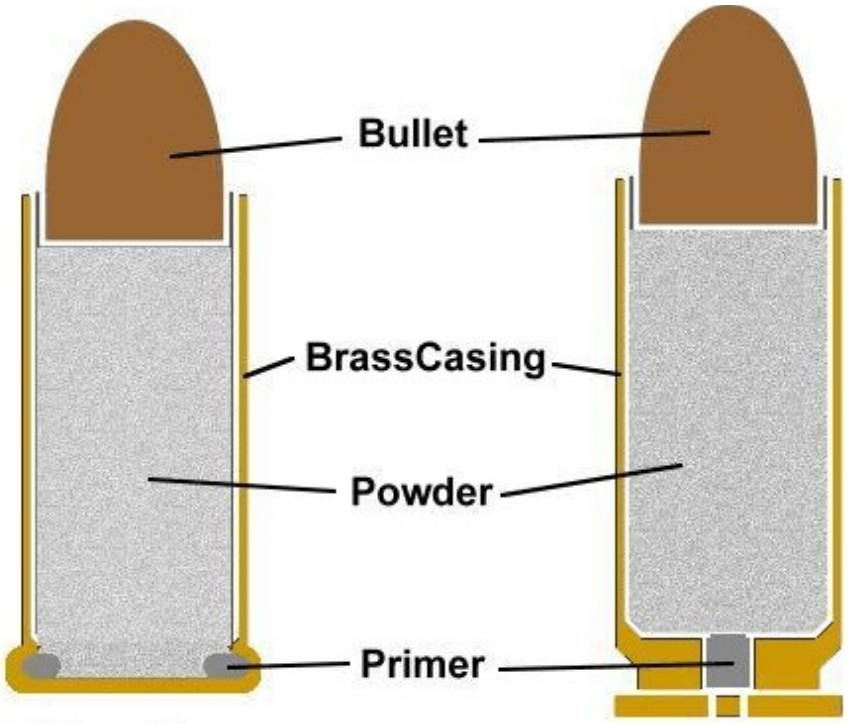
•

Any residue on the bullet can be studied and compared to residue on the hand of a suspect, the gun that was fired, or any object that was close by when the firearm was used. This information helps researchers uncover the identity of the shooter.

•

Even when the bul ets are missing, the type of impact they made can stil lead investigators to ascertain what kind of bul et the criminal used, and therefore the type of gun as well.


Centerfire Bullet
Head of Casing
Firing Pin Imprint
Primer

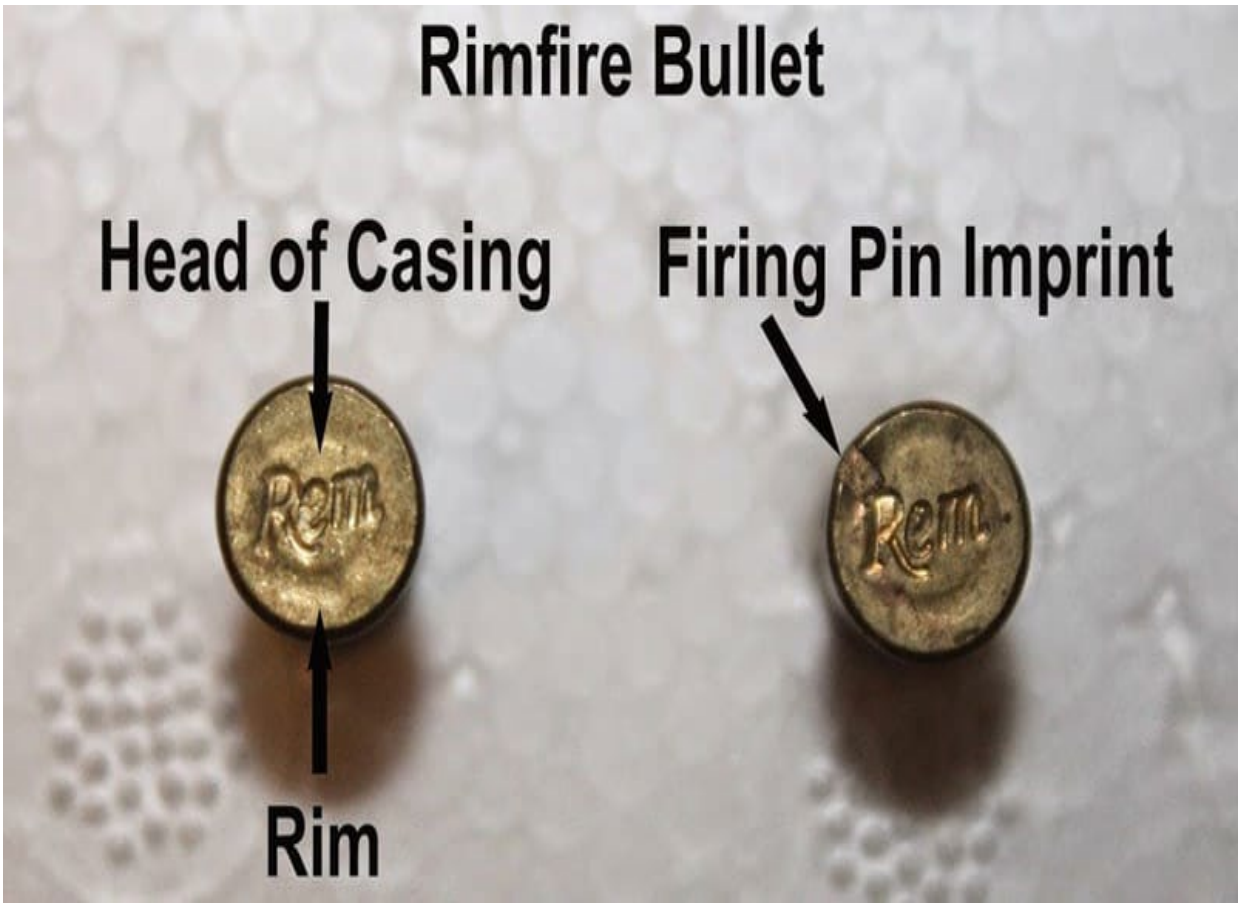


Rimfire

Firing Pin crushes rim

Centerfire

Firing Pin strikes center of primer



•

Studying the markings found on a bullet or the impact a bul et made on any surface can establish exactly which gun the criminal used. Every gun produces a slightly different and unique pattern on the shel -casing it fires; the bullet wil therefore imprint a distinct pattern upon anything it hits. Once scientists have identified these markings they can easily match them to the appropriate firearm, this is known as bal istic fingerprinting.

Cartridges and their components

There are two main types of cartridges: i.e. centrefire and rimfire.

The images below differentiates between the various components of a cartridge.

•

Bul et: The bul et is the part of the cartridge that strikes the target.

•

Brass Casing or Case: The case holds the primer, powder and the bullet

•

Gun Powder: The powder burns and creates gas to push the bullet through the bore and out of the muzzle.

•

Primer: The primer compound explodes when struck by the firing pin and ignites the powder.

Hence, each component of the cartridge may be examined forensical y to identify the specific gun that was used.

Moreover, as the bullet passes through the gun, the barrel produces individual markings in addition to a bullet's

land and groove impressions. It is these unique markings that al ow an examiner to match the bullet to the firearm.

Col ection, Preservation and Transport of Evidence[50]

In order to minimize safety risks and contamination of evidence the fol owing measures should be fol owed while col ecting and packaging the evidence:

•

Every evidence exhibit must be packaged separately.

•

Every firearm must be packaged in unloaded condition with safety on.

•

There must not be live rounds in the chamber of the firearm, magazine or in the parcel.

•

Every cartridge case and bullet must be packaged separately.

•

Evidence submitted for Gun Shot Residue (GSR) analysis must be packaged in a hard box instead of cloth bag or paper envelope. Layers of the clothes containing GSR must not touch with the other layers. Clothes must be wrapped by placing a white paper sheet between the layers of clothes before packing it in a hard box.

50 PFSA Guideline. <http://pfsa.gop.pk/?page_id=37> .

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•

For serial number restoration of firearms, the area containing obliteration should be marked clearly if there is more than one location of obliteration.

•

For trajectory analysis, vehicles must not be washed or cleaned at al prior to examination. Suspected bul et holes must be covered with white paper.

•

Seals must be intact

•

If a firearm is recovered from water or any other liquid, then the firearm must be submitted with the same sample of water or liquid from which was recovered.

10. CHAIN OF CUSTODY

Chain of custody refers to the ‘chronological and careful documentation of evidence’[51] to establish its connection to a crime. All evidence has to be careful y and properly documented bearing in mind its peculiarities. Maintaining a chain of custody requires the production and maintenance of written documentation with a clear-cut timeline. Any transfer or transportation of evidence also has to be documented. This is to ensure that the evidence has not been contaminated, replaced, tampered with or compromised in any way. [52]

Case law on Chain of Custody

Thus, in *State v. Sadam*[53] there was no identifiable chain of custody because of which the defendant was acquitted of a charge under Section 7 of the Anti-Terrorism Act, 1997. The judgment was appealed and it was held that because the five rounds from the firearms were sent to the Fire Arms Expert after a delay of three days and received by the Forensic Science Laboratory after nine days, without any explanation and without anything on record showing in whose safe custody the said five rounds were lying during the period, they lost their evidentiary value. There was nothing on record that showed where the live rounds were before they were sent to the Expert.

Moreover, the recovered explosive material was examined by the Bomb Disposal Unit after two months of the incident and the Expert who examined the explosive material was never examined by the prosecution. This created a serious dent in the case of the prosecution which led to an acquittal.

Similarly, in *Mustaqeem v. Nawab Khan*[54] there was no documented chain of custody in this case. The empties recovered from the crime scene were sent to the Forensic Science Laboratory after a delay of eleven days and there was no documentation of where they had been before they were dispatched. In light of this, a positive report of the Forensic Science Laboratory that connected the accused to the crime was discredited and considered inadmissible.

11. CASE LAW CONCERNING COLLECTION OF EVIDENCE FROM THE CRIME SCENE

Muhammad Ayoob vs. the State[55]

Procedural History

51 *Crime Scene and Physical Evidence Awareness for Non-Forensic Personnel* (United Nations Office on Drugs and Crime 2009), 4

<https://www.unodc.org/documents/scientific/Crime_scene_awareness_Ebook.pdf> accessed 8 August 2019

52 Joseph A. Prahlow, 'Forensic Pathology for Police, Death Investigators, Attorneys, and Forensic Scientists' 18 (1st ed. Humana Press 2010).

53 2016 PCr.LJ 1815.

54 2016 YLR 905.

55 2012 PCrLJ 1438 Karachi High Court-Sindh

63

This appeal was directed against the impugned judgment passed by the Anti-Terrorism Court, whereby the appel ant was convicted under s.7(b) of the Act, 1997 read with ss.4/5 of the Explosive Substances Act of 1908 and was sentenced to imprisonment of 7 years.

Facts

The facts of the prosecution case are that the appel ant was al egedly responsible for planning a terrorist attack.

During interrogation the appellant admitted to possessing the al eged arms that were later recovered from his house.

Analysis

The Court examined two aspects of evidence col ection; custody and dispatch and found the fol owing discrepancies in the prosecution's case:

•

According to the FIR the arms were not sealed at the spot and even when the arms were produced in Court they were not in a sealed condition.

•

The arms and ammunition were sent to the expert after a considerable delay of 2 months and 26 days and no explanation had been given by the IO, justifying the reason for the delay.

•

As per the FIR, the arms and ammunition were placed in two plastic bags and one green Rexine bag.

However, the al eged Rexine bag produced in court was yel ow and blue in colour

•

According to the FIR the recovered Kalashnikov bul ets were 20 in number, whereas the IO produced 21

bullets in Court.

•

The appel ant was already in custody since 3rd October, 2002, and the al eged arms and ammunition were said to have been produced by him after a delay of 12 days which also makes the recovery highly doubtful.

Ruling

The Court held that *"keeping in view the above contradictions and after going through the entire evidence we are of the opinion that the prosecution has miserably failed to prove its case, therefore, the impugned judgment is set aside and the appellant is acquitted"* . Hence the appeal was accepted by Sindh High Court.

Sher Rehman vs. State[56]

Facts:

In this case, the al eged recovery was made on 18.07.2016; the recovered explosive materials were sent to the Bomb Disposal Unit (BDU) in charge for an opinion/report on 19.07.2016. However, the dispatched material was received by the Assistant Inspector General of Police, BDU Special Branch, KPK, Peshawar, on 29.07.2016 i.e. ten days after their dispatch.

Ruling

The Court said that "*these glaring discrepancies should not have escaped notice of the learned trial Court while convicting the appellant/accused and awarding him the impugned sentences. Therefore, conviction and sentences awarded to the accused are not sustainable in law, and ought to be set aside.*" (Paragraph 9 of the Judgment).

Ghulam Mustafa Alias Baggi vs. State[57]

The inefficiency and delay by the police in sending medical evidence to the concerned laboratories can also cast doubt over the credibility of the MLC (Medical Legal Report) and the forensic lab report.

56 2018 MLD 221

57 2014 PCrLJ 89

Facts

The medical officer while performing an autopsy of the body, removed, sealed and dispatched certain body parts to the police. As per the MLC the police were required to dispatch the body parts for further examination to the chemical examiner. However, the body parts were held in police custody for over a year, after which the parcels were dispatched to the chemical examiner. Hence, the delay shed doubt over the credibility of the evidence.

Ruling

"The Court held that the considerable delay of one year has called the case proceedings of the prosecution into question"

12. SITE PLAN AND ITS PURPOSE

The Site Plan also known as the Crime Scene Sketch or the Plan Scene[58] is an accurate map of the scene of the crime that is, in most cases, to be drawn up by the investigating officer and represents a topographical view of the crimes.

The plan is to be drawn in two sets with one submitted to the court and the other may be retained by the Police for investigation purposes. The site plan may be a rough sketch of the crime scene or a plan to scale, where required. It is to be noted that the site plan is not a substantive piece of evidence at trial and, therefore, can only be used to corroborate or contradict other evidence. This was decided in *Karamat Hussain v. the State*, [59] where the court held: *When the direct evidence is available and believed then the other evidence loses its evidentiary value as the same is only corroborative in nature. This Court has already held in a number of cases that the site-plan is not a substantive piece of evidence and in presence of direct evidence the same can be ignored.*

In some circumstances, the IO may request the assistance of the patwari (draftsman) to draft an accurate site plan to scale. This is done in the cases of heinous crimes such as murder or rioting. [60] In regular cases the IO is competent to make the site plane him/herself. [61] One copy of the site plan is to be part of the Police Report to be sent for trial and the other is to be retained by the police. In the copy of the site plan to be sent for trial, the IO is to make reference to facts observed by him/her or other members of the Police. In the second copy that the Police are to retain, the IO

is to record references based on witness statements.

What should be included in the Site Plan?

It is necessary that the whole site plan is in accordance with the Istighasa (Complaint). The IO must consider the fol owing, according to the

prevailing circumstances of the case:

● Clearly and accurately mark North and South. The site under inspection may be examined in a clock-wise direction.

● Complete an accurate sketch of the place of occurrence including the ground, building road-side, park, etc.

● Mark the presence of each witness, including the complainant, in the plan. The positions of witnesses also ought to be reflected in the site-plan. The site would be examined on pointation of the witnesses.

● Names of each and every witness should be mentioned in the notes.

● Mark the presence of each accused person in the drawing.

58 As per Police Rule 25.13

59 2018 YLR 685

60 As per Police Rule 25.13

61 *Muhammad Ashraf Khan Tareen v. the State,* 1995 PCrLJ 313:

“Preparation of the site plan by the expert is necessary only if the Investigating Officer considers it proper to have the assistance of a technical man, otherwise there is no bar to the making of map by the police officer who investigates the case.”

65

● Include the name and place of presence of each accused persons in the notes.

● Mark the locations of the recovered items/material in the drawing. (Necessary pieces of evidence must be col ected from the site of occurrence such as blood-stained dust, footprints of the accused persons, etc).

● Name and specification of items/material recovered in the notes.

● If police arrived at the crime scene, indicate from which side they arrived.

● If any of the accused absconded/fled away from the location, indicate the specific direction in which the accused person(s) fled off.

● Include in the notes a description of the weather, date and time.

● Distance between the accused and the witness should be mentioned.

● Distance between the accused and the aggrieved should be mentioned.

● In case the offence has been committed at night, the lighting conditions and other similar arrangements should be mentioned and photographed or taken into possession wherever possible. The purpose is to establish the fact that the witness or the complainant, if he was at the crime scene, was clearly able to see the incident (the source of light, if any, is very important to include).

● Usual y logic, observation and experience are used to determine the size of the crime scene. In case of a crime/ explosion caused by a Vehicle Borne Improvised Explosive Device, the crime scene is usual y much larger. Hence, in such a case the perimeter is kept much wider.

● Prepare a legend to facilitate understanding of the site plan.

● Photograph/video record the crime scene with markers and *scale* whenever possible.

Value in Investigation and Court Proceedings

The crime scene sketch is an important document that forms part of the case file. Beyond the case file, a good sketch can be a useful aid in investigation. Similarly, it assists during questioning, in preparing the offense report and in presenting information to the court, complement the photographs and notes made during the crime scene search.

However, a site-plan does not form a substantial piece of evidence. Accordingly, it is only a supporting document which assists in understanding the location of the incident. 62

13. USE OF PHOTOGRAPHY AND VIDEO TO SUPPLEMENT THE SITE PLAN AND THE INVESTIGATION

Photography is an integral part of the crime scene process and the same is recognized in Police Rule 25.33(9), particularly photographing of the body in cases of homicide. From the standpoint of evidence, photographs are admissible in court, if testimony can establish that they accurately depict the scene.

How to Photograph the Crime Scene?

Fol owing points must be ensured during photography of the scene:

1. Take photographs in a particular sequence in order to assist the investigator or the court to reconstruct the scene without confusion.

2. The crime scene should be photographed exhaustively and the Entire area should be covered.

3. Preferably, the surrounding area should also be photographed.

4. Photographs of the deceased and injured, and al items connected with them, should be photographed.

62 Barrister Abdul Khalique Shaikh (PSP) and Muhammad Akbar (PSP, QPM, PPM) 2014. ‘Basic Investigation Handbook’. Paramount Books (Pvt.) Ltd. Karachi. pg. 85.

66

5. Photographs of arms/ammunition/empty holes made by gun shots/explosions, material defects should not be missed out.

6. Long shots and close-ups should be taken to highlight the position of important items of evidence.

7. Photographs of material evidence should be taken before removal from the scene.

8. Photographs of the fingerprints before lifting may also be taken.

9. Investigating officer should identify and point out to the photographer the objects, spots, persons, suspicious items, which have a specific or potential importance for investigation.

Evidentiary Value of Photographs during the trial

Rashid Minhas v. Muhammad Fayyaz[63]

Facts

The case concerned an appeal against the judgment in Hudood Case No.4 of 2004 whereby the accused, Muhammad Fayyaz, was acquitted of the charges against him under Section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and section 377, PP.C. The complainant, Rashid Minhas, claimed that one day on his way to Government High School Mianwala the incident took place. He al eged that the accused, Fayyaz, forcibly took him to his Dhoke from Adda Mianwala, where after he committed sodomy upon the victim in a room. The accused thereafter released the victim, who went to his Dhoke and narrated the facts to his mother, Mst. Parveen Akhtar, whereafter the victim lodged a report with the police. Fol owing the arrest of the accused and the recording of his statements, a *challan* was submitted against the accused in the trial Court under section 173 of the Code of Criminal Procedure.

The trial court acquitted the accused after considering the evidence of both parties. Consequently, Rashid Minhas filed an appeal against the decree.

In the trial, the respondent (Accused) relied upon the photographs, that were used as evidence of sexual intercourse on the part of the victim, to prove that the victim was a person of easy virtues and that, accordingly, his statements could not be relied upon. In the photographs, the face of the accused was not visible but from the photographs it was clearly evident that the victim was involved in an activity involving sexual intercourse.

However, these photographs could equal y be relied upon to establish the guilt of the accused. The defence had not denied that the offence had been committed. When the photographs had been produced before the trial court,

the victim had admitted that those photographs were his, and also that the person hiding his face in the photographs was the offender, Fayyaz. The minor victim had also innocently stated that the photographs had been taken by Fayyaz, not being aware of how photos are taken. The production of the said photographs at trial by the defence and the reliance of the defence on the same and on the cross-examination of the minor victim with respect to the photographs al indicated a connection of the accused to the crime.

Moreover, the defence argued that the insistence of the accused on the fact that the victim was a boy of easy virtue possibly reflected his involvement in the ‘easy affair’. Thus, procurement/production of the photographs and the reliance placed upon them by the defence on them indicated that the accused could potential y be associated with a circle of exploiters of minors of easy ‘virtue’, who subsequently blackmailed the minors through the photographs, videos etc. taken at the crime scene.

Evidentiary Value of the Photographs

The court relied on the production of the photographs by the defence to conclude that the accused had admitted that the act had taken place through their own conduct. However, the guilt of the accused was not established on 63 2012, PCrLJ, 817

67

the basis of the photographs alone. Rather, it was corroborated by more substantial evidence such as the medical report, the chemical examination, the testimonies of the witnesses etc.

14. DOCUMENTATION RELATING TO THE CRIME SCENE

Documentation related to al aspects of the crime scene is critical to a successful investigation and if the case goes to trial for the successful prosecution of the accused. While the relevant documents which may need to be prepared have been discussed above, it may be useful to list the common documents which may need to be prepared below: 1. Site Plan

2. List of exhibits recovered

3. Recovery/Seizure Memos

4. Photography

5. Victim Description

6. Arrest Memo

7. Witness Statements under Sec. 154 Cr.P.C.

Depending on the particular crime scene various other documents may also need to be prepared.

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CHAPTER 5: SEARCH AND SEIZURE

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INTRODUCTION

During the course of an investigation, a police officer is required to search persons; buildings; vehicles etc. which can lead to the recovery or discovery of weapons; stolen property; documents; CDs; mobile phones or some other materials become strong pieces of evidence against the accused persons. Indeed, evidence that is col ected during search can tie the accused to the crime. Therefore, al searches must be carried out strictly in accordance with the requirements of law, otherwise the recoveries may become doubtful, and damage the case of the prosecution.

As a first step, whenever searches are to be made, the police officer must be mindful about the constitutional protection of privacy as enshrined in Art. 14 of the Constitution. This, however, is subject to permissibility of law which enables the police officer to enter a house for the purpose of arresting a wanted criminal or to make a searches to find something incriminating. Gazetted officers supervising investigations shal take disciplinary action against investigating officers who carry out searches under section 165Cr.P.C, 64 without sufficient justification. Indeed, the police does not have unlimited powers to make search of a house or a person, and disturb the

privacy and dignity in violation of mandate of the constitution of Pakistan. [65]

1. TYPES OF SEARCHES

•

Search with warrant where permission is required from a magistrate as per s.96 of the Cr.P.C.

•

Search without a warrant during the course of an investigation as per s.165 of the Cr.P.C.

i.

Search with a Warrant

When is a search warrant required? [66]

1. Where any Court has reason to believe that a person to whom a summons or order under section 94[67] or a requisition under section 95[68], sub-section (1), has been or might be addressed, AND

2. wil not or would not produce the document or thing as required by such summons or requisition. OR

3. where such documents or thing is not known to the Court to be in the possession of any person, OR

4. where the Court considers that the purposes of any inquiry, trial or other proceeding wil be served by a general search or inspection. it may issue a search-warrant.

Search warrants issued by magistrates could be either for:

64 S.165 Cr.P.C. allows for searches by a police officer to find anything connected with the investigation 65 Police Rule 25.23

66 Section 96 of the Cr.P.C 1989

67 Whenever any Court, or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Cr.P.C by or before such Court or officer, such Court may issue a summons, or such officers a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

68 If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, High Court or Court of Sessions, wanted for the purpose of any investigation, inquiry trial or other proceeding under the Cr.P.C 1898PC.

70

1. Recovery of a person; or

2. Recovery of an article

i . Search without a Warrant

When can search without a warrant be made?

Section 165 empowers the police officer specified to make a search without warrant subject to certain safeguards. The prerequisites for a search as per this section are that:

i.

Search must be necessary for investigation

i . The offence must be such as the police officer is authorized to investigate, i.e. a cognizable offence.

i i. Reasonable grounds must exist for believing that the thing required wil be found in a place.

iv. (iv.) There would be undue delay in getting the things in any other way.

v. Grounds of belief as to necessity of search must be previously recorded by the police officer.

These conditions must be fulfil ed and there should not be misuse of the power nor there should be any harassment. "*The perusal of the section leaves no doubt that it does not apply when search is for arrest of the accused. The search envisaged by this section is to be made for a specified thing. A person is not a thing. …*

where police [do] not record in writing in Roznamcha grounds for making search of the house of the accused, it was held that it was without jurisdiction and bad in law" [69]

Raids/Search on Spy Information

Raids for recovery of narcotics, terrorism offences under the Anti-Terrorism Act, 1997 and il egal weapons by police on spy information are a regular phenomenon and are conducted without warrant. Accordingly, it is important that police officers need to differentiate between raids for recovery of narcotics and searches conducted pursuant to terrorism offences from il egal weapons.

Final y, it is advisable not to act rashly on receipt of information which could be motivated due to a number of factors. Therefore, emphasis must be placed on the credibility of the informer and the quality of information should be carefully analysed. In cases of doubt, senior officer should always be consulted.

2. GUIDELINES/ RULES TO BE FOLLOWED WHEN CONDUCTING SEARCH AND SEIZURE[70]

i.

An officer in-charge of a police station or the police-officer making an investigation must ensure that the place being searched is in the correct jurisdiction.

i . The officer must record in writing the grounds of his belief if the search is made without a warrant i i. The officer must specify in writing the place of his search if the search is made without a warrant iv. The officer must justify the undue delay in the search if the search is made without a warrant v. Conversely, when a search is being made without a warrant, during an investigation, the occupants of the premises may be reluctant. In such a scenario, the police must be in sufficient numbers and two respectable witnesses of the locality should be present. Provided, that the search is to take place within the jurisdiction of another police station, Section 166 of the Cr.P.C. stipulates that the station house officer of that police station may conduct the search who shal proceed with it in accordance with s.165 of the Cr.P.C.

vi. An officer-in-charge of a police station receiving a requisition to search u/s 166 of Cr.P.C, should comply without 69 *Muhammad Bilal v. Superintendent of Police, Dera Ghazi Khan,* PLD 1999 Lah 297 read along with Section 165 of the Cr.P.C 1898

70 Section 165 & Section 166 of Cr.P.C 1898; Section 21B of ATA

71

unnecessary delay and should take al necessary precautions to ensure a successful search.

vi . If the object in question can be obtained otherwise, the officer is not required to make the search.

vi i. The officer should ensure that the precautionary measures are not avoided. 71

ix. Whatever recoveries are made from the searches they must be done in accordance with Form 25.23(I)(a)(b) and (c).

x. Whenever a closed place is to be searched under a warrant, the police officer is to inform any person residing in, or being in charge of such a place and show the search warrants. Any such person, on production of search warrant, should allow free ingress and afford all reasonable facilities for a search. Provided that ingress cannot be obtained, the police officer can break

open to gain access with use of reasonable force and due care for decency. 72

What may happen in case the Police fails to record in writing the grounds for making the search?

In Ashiq Din v. The State, PLD 1968 Lah. 1425 the Court specified that "The Head Constable did not record in writing the grounds for making a search of the house of Ashiq din and his brothers. As such the act of the Head Constable suffered from a complete absence of jurisdiction."

What if the search required to be made is in a place outside the territorial jurisdiction of the Police? 73

"It is mandatory for officer-in-charge of a police station who desires to make a search in any place outside his territorial jurisdiction to make a request to the officer in charge of the police stations having territorial jurisdiction to make such search. However, it further provides that in case the first Police Officer is of the view that there may be a delay caused in fol owing the said procedure which may result in evidence being concealed or destroyed then he may cause the said search to be made by himself but he has to issue forthwith a notice for search to the officer-in-charge of the police station having territorial jurisdiction … It is essential that a Police Officer conducting a search under section 165 or 166 of the Code of Criminal Procedure should send forthwith, to the nearest Magistrate, copies of the record that he has prepared before undertaking the search and non-compliance in such cases would amount to disregard of a mandatory provision and no conviction can be based on such defective investigation."

3. THE REQUIREMENT OF PRESENCE OF WITNESSES DURING THE SEARCH

Searches (with and without warrant) are governed under s.103 of the Cr.P.C. and may be broken down into the fol owing two requirements:

1. Before making a search, the police officer shal cal upon two or more respectable inhabitants of the locality to attend and witness the search and may issue an order in writing to them in Form No: 25.23 (l)(b).

2. The search shal be made in their presence and a list of al things seized during search shal be prepared in Form No: 25.23 (l)(C) and signed by the witnesses.

In addition, the fol owing should also be adhered:

•

Occupant of the place that is being searched should be al owed to attend and witness the search and/or the recovery proceedings, and a copy of the list should be delivered to him.

•

A person refusing or neglecting to attend and witness the search shal be deemed to have committed an offence under section 180 of the PPC.

71 Police Rules 1934, s. 25.23

72 Section 46 and 47 read with Section 102 the Cr.P.C 1898

73 *Murtaza Hussain v. The State,* 1996 PCr.LJ 510

72

•

Record prepared under s.103 of the Cr.P.C. is usual y cal ed ‘Mushir Nama’ even though the word ‘MUSHIR’

does not appear in the Cr.P.C., the term refers to respectable witnesses and a Mushir Nama is the record prepared in the presence and signed by such witnesses.

•

Requirement of s.103 of the Cr.P.C., concerning preparation of record is that the police officer would prepare list of things seized, show places from where things were recovered and get the same signed by the Mushir.

This requirement is inapplicable when:

•

In the case of arrest of accused and subsequent recovery from a public place, the presence of two witnesses of the locality is not mandatory requirement of s.103 of the Cr.P.C. In such a situation the police officials who has no mala fide against the accused could act as Mushir.

•

If a search is being made under the ATA, CNSA, of a running vehicle, or on pointation of the accused.

In cases of non-compliance of this provision, where it is applicable, the fol owing occurs:

•

Recoveries would become less reliable when no public witness is associated while making recovery or where public witnesses could have been available. However, the mere non-compliance does not make the search il egal. Rather, the onus for non-explanation fal s on the police officer and any benefit of doubt wil go in favour of the accused.

•

This burden may be discharged by bringing, on record, reasons which made circumstances such that s.103

of the Cr.P.C. could not be complied with. Moreover, a general explanation that the accused is a dangerous person and nobody is wil ing to become part of the search is not deemed a valid excuse.

•

Police officer may also be relied upon as a witness of recovery but since they may either be investigating officer or attached with the investigation staff,

their evidence is to be scrutinized with due care and caution within the circumstances of each case.

•

Final y, police witnesses are as good witnesses as any other witnesses, and when none from public are available or forthcoming, then the evidence of police officer would be acceptable.

4. HOW TO CONDUCT AN ORGANIZED SEARCH?

i.

Organized Search

In addition to the legal compliance for carrying out searches, a police officer must also be aware of the factors that contribute to conducting a search in an organized manner. These are as fol ows:

1. List of police officers participating in the search should be prepared.

2. Issue notice to local witnesses.

3. Deploy cordon of the house/place under command of an officer.

4. Cover al exit points.

5. Cal the occupant and inform him about the search. If there is resistance/refusal to entry, overcome resistance and place such person under watch during the search.

a. Preferably the officer in charge should conduct search personal y in presence of the occupant and the witnesses.

b. If there is any additional help required, only designated officers should conduct the search.

c. After the search is complete, prepare search list in Form 25.23(I)(C) and get it signed by the witnesses.

d. Deliver a copy of the list to the occupant if he requests so.

73

e. When conducting a search in another police station, send information to local police station before start of the search.

f. Send record of search to local police station and the area magistrate.

i . Conducting a Search when Armed Force is Apprehended

1. Place the cordon at a safe distance.

2. Preferably cal help of trained police forces.

3. Al exit routes should be occupied and the premises should be approached in pairs after covering each other.

4. Thereafter, the main entrance should be occupied and force should be deployed under the command of an officer.

5. In the first instance, only trained forces should enter in smal teams where they cover each other and keep neutralizing the resistance. Simultaneously, gunmen should be placed at al vantage points.

6. The officer in charge should gather al persons that are present inside at one place.

7. A search should be conducted for weapons, if any.

8. No civilian or any police officer in civil clothes should be al owed in during search proceedings.

9. If the building in question has several floors, then the ground floor should be cleared first and guards should be placed on al routes leading upstairs. These guards are to ensure that there is no sudden attack from any side during the search of the ground floor.

10. Move on to the next storey and complete the search of the building.

11. Rooms should be entered by trained policemen in pairs covering each other. They should always move along the wal s.

12. Al persons found in the building during search should be placed at one place under a guard and a list be prepared. No one should be al owed to leave til search is completed.

13. In case of an armed attack or firing upon approaching the building, the operation is to be handed over to professional police forces.

14. Start the actual search when the in charge of elite police reports that the building is in their control and guards have been posted at al vantage points.

5. SEARCH OF ACCUSED PERSONS

At the time of the arrest, the arrestee is also searched. During the search, his/her personal belongings are taken from them and kept in safe custody. 74 Women subjects are to be searched by women. 75 After arrest, the person is to be searched before transfer to the police mobile or any other place. Moreover, the inventory of belongings recovered from him/her should be prepared in presence of witnesses. Final y, every prisoner in police custody shal be searched both on first admission to lock-up and on every subsequent admission to lock-up. 'The officer or other person making any arrest may take from the person arrested any offensive weapons which he has about his person, and shal deliver al weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.'76

6. SEARCH FOR PERSONS WRONGFULLY CONFINED.

74 Rule 26.3, Police Rules 1934 read along with Section 51 of the Cr.P.C 1898

75 Rule 26.3, Police Rules 1934 read along with Section 52 of the Cr.P.C 1898

76 Section 53 of the Cr.P.C 1898

If any Magistrate of the first class or Sub-Divisional Magistrate has reason to believe that any person is confined unreasonably and that the confinement amounts to an offence, he may issue a search-warrant, and the Police wil be directed to search for the person. Once the person is found, he shal be immediately taken before a Magistrate.

7. DOCUMENTS RELATING TO SEARCH

Check List related to Search

S. NO ACTION

YES

NO

NOT APPLICABLE

1.

FIR No. with date and offence

2.

Date and place of search

3.

Name, parentage, residence of persons to be searched

4.

Article to be searched for

5.

Reasons for which search is made

6.

Signature of police officer making search

75

7.4.1 1

FORM 25.23(I)(a)

NOTICE OF SEARCH

FIR NO. _____DATED_____OFFENCE

UNDER SECTION 165 & 166 Cr. P. C.

Date and place of Search	Name, par-entage Resi-dence and cast of the person to be searched	Articles to be searched for	Reasons for which search is made
1	2	3	4

Signature of Officer Incharge
/Investigation officer

Endorsement in case the officer causing search to be made is unable to conduct it in person. I hereby authorize _____ to conduct the search as I am unable to conduct it in person for the following reason.

_____

_____

Signature of Officer Incharge
/Investigation officer

76

2 **FORM NO. 25.23(I)(b)**

ORDER UNDER SECTION 103(I) Cr. P. C.

REQUIRING ATTENDANCE OF A WITNESS AT A SEARCH

FIR NO _____ DATED_____

SECTION_____ _____POLICE STATION_____

TO_____

Where as it is necessary to make a search in the above mentioned case of the house / shop / place of _____ Situated in _____.

Therefore I,_____ call upon you to attend at the aforesaid house/shop/place to witness the search.

Note: Failure to attend without reasonable cause is punishable under section 180 PPC

Dated:

Signature and designation of officer

Conducting the search

Check List: Inventory of Search

S. NO ACTION

YES

NO

NOT APPLICABLE

1. FIR No. with date and P.S.

2. Name/parentage and address of person whose house/place/building was searched

3. Name/parentage of accused/or any other person on whose pointation recovery is made

4. Description of each article and place from which the article is recovered

5. Names and signatures of two witnesses

6. Name and signature of officer making search

FORM No. 25.23(I)(c)

Form of search list prescribed by section 103(2) Cr. P. C.

FIR NO: _____DATED_____POLICE STATION_____

The house of _____ resident of _____ was searched in the presence of the under mentioned witnesses and the following articles were recovered and taken into possession by the police on the statement and indication of _____ son of _____ caste_____ resident of _____ accused in the above mentioned case.

Article	Place from which Recovered
1.	
2.	

Name and signature of the witnesses

1.

2.

Signature and designation of the officer conducting search

Dated:

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CHAPTER 6: EVIDENCE

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EVIDENCE

1. DEFINITION OF EVIDENCE

Black's Law Dictionary has defined evidence as, "something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an al eged fact." 77 In strictly legal terms, "evidence" refers to only that body of evidence which is placed before a court while hearing a case. Article 2(1)(c) of QSO states that "evidence"

includes: "(i) al statements which the Court permits or requires be made before it by witnesses, in relation to matters of fact under inquiry…" and "(i) al documents produced for the inspection of the Court…"

Overal, there are three yardsticks on which "evidence" is to be examined:

(a) Admissibilty. The courts do not alow parties to present before them every piece of evidence which a part wishes to present; instead, only certain kinds of evidence is admissible. Most of the provisions of Qanun-e-Shahad Order are dedicated to this single question: what is admissible evidence and what is not. The most bais rule regarding evidence is "the best evidenc rule", ie.

secondary evidence is only admissible when primary evidence is not available.

(b) Relevance. Generaly courts wil only alow evidence to be given about facts which, if proven, would directly affect the outcome of the case.

(c) Reliability. The test for determining the credibility of evidence is common sense, ie. whether after considering it, would a prudent man act upon the supposition that it is credible.

Historicaly, trials in the common law system were conducted before juries where the only role of the judge to determing whether a piece of evidence was admissible and relevant. Once a piece of evidence was deemed both admissible and relevant, it was upto the jury to determine whether or not it was reliable. This is why legal principles have emerged to determine admissibility and relevant but no such principles exist to resolve dispute over reliability of evidence. There, the solution lies in comment sense, not legal debate.

Overal, evidence can be categorized according to three “sources”:

(a) Prosecution; evidence this is generaly the most important part of evidence.

(b) Defence evidence; in Pakistan, this form of evidence is rarely provided; however, the law al ows accused persons to present evidence to support and corroborate the statement of the case provided by the accused under S. 342;
(c) Evidence gathered by the Court, ie. suo mote evidence; Section ….

77 Bryan A Garner and Henry Campbell Black, *Black's Law Dictionary* (8th edn, Thomson West) 595

81

ASSESSMENT SHEET FOR EVIDENCE

O**P**ral E

W- vid**A**enc

dmei ssible ?

Documentary Evidence (including evidence

1

from modern devices)

Relevant

?

PW-1

Admissible

?

Reliable

?

Relevant

?

PW- Admissible ?

2

Reliable

?

Relevant

?

Prosecution

PW-2

Admissible

?

Reliable

?

Relevant

?

Reliable

?

Oral Evidence

Documentary Evidence (including evidence

from modern devices)

PW-1 Admissible

?

PW-1

Admissible

?

Relevant

?

Relevant

?

nce

Reliable

?

Reliable

?

PW-2 Admissible

?

Defe

PW-2

Admissible

?

Relevant

?

Relevant

?

Reliable

?

Reliable

?

Oral Evidence

Documentary Evidence (including evidence

from modern devices)

Evidence PW-1 Admissible

?

produced

PW-1

Admissible

?

upon

Relevant

?

Court

Relevant

?

Reliable

?

initiative

Reliable

?

PW-2 Admissible

?

PW-2

Admissible

?

Relevant

?

Relevant

?

Reliable

?

Reliable

?

82

2. BEST EVIDENCE RULE

“The best evidence rule” suggests that the original document or piece of evidence is superior to copies, and where the original is available, the copy wil not be permissible as evidence in trial. If the original is available, it must be offered priority rather than submitting a copy or oral rendition. The evidentiary rule stipulates that to prove the contents of a writing (or a recording or photograph), a party must produce the original writing (or a mechanical, electronic, or other familiar duplicate, such as a photocopy). In the case where primary evidence is unavailable, secondary evidence or the testimony of the drafter or a person who read the document may be admitted.

“The best evidence rule” is also termed as the “documentary-originals rule;” “original writing rule” and the “original –document rule.” It is the requirement of "best evidence rule" that the best evidence of which the case in its nature is susceptible should always be presented.

3. CLASSIFICATION OF EVIDENCE

I. PRIMARY AND SECONDARY EVIDENCE

Art. 72 of the QSO lays down that contents of documents may be proved either by primary or secondary evidence. 78

Primary evidence

•

Primary evidence or best evidence is considered of highest evidentiary value.

•

It can include an original document or an oral account of the original evidence, for example, a person who saw the occurrence and gives an account of it. 79

Secondary evidence

•

Secondary evidence, as inferior to the primary evidence becomes admissible when the primary or best evidence is lost or inaccessible. 80

•

Secondary evidence includes certified copies, copies made from the original by mechanical process which ensures the accuracy of the copy; copies compared with such copies; copies made from or compared with the original, counterparts of documents as against the parties who did not

execute them and oral accounts of the contents of a document given by some person who has seen it. 81

PRIMARY EVIDENCE

SECONDARY EVIDENCE

• **Production of documents in its original form.**

• Secondary evidence means production of a copy

• **Written documents which can be public or**

of document in place of original document.

private documents, are usual y produced as

• Secondary evidence is normal y considered

primary evidence.

insufficient evidence unless it is proved through

• **Example: The original wil is primary**

other evidence that production of the original

evidence.

document has become impossible and

therefore, its copy has been produced.

• Example: A copy of the wil is secondary

evidence.

II. DIRECT AND INDIRECT EVIDENCE

78 *Qari Muhammad Sadiq Jameel vs. The State*, 2019 YLR 882

79 Bryan A Garner and Henry Campbell Black, *Black's Law Dictionary* (8th edn, Thomson West) 80 Bryan A Garner and Henry Campbell Black, *Black's Law Dictionary* (8th edn, Thomson West) 81 Qanoon-e-Shahadat Order, 1984, Article 74

Evidence can have many forms and fal s under several categories. Examples include forensic, oral, direct, indirect, circumstantial, physical, material, documentary, exculpatory evidence, etc. The primary categories to understand are direct and indirect evidence

Direct Evidence

Direct evidence is evidence, which directly proves a fact, with no additional inference or deduction required. In other words, the existence of this type of evidence proves a fact. Direct evidence could come in many forms, such as through witness testimony (which we could cal oral evidence), or by showing a physical object, which proves a fact.

Indirect Evidence

Indirect evidence is also known as circumstantial evidence. It is evidence from which the trier of fact (i.e. the judge) can make a logical inference or a reasonable deduction to prove a fact. This type of evidence can come in many forms such as forensic evidence, physical evidence, etc.

It should be noted that the many categories of evidence can be used as either direct or indirect/circumstantial evidence.

The fol owing table defines direct and indirect evidence and differentiates between the two.

DIRECT EVIDENCE

INDIRECT EVIDENCE

Direct Evidence is evidence which directly proves a Indirect Evidence is also known as circumstantial fact. No inference or deduction is required here

evidence from which the adjudicator of fact (i.e. the because the existence of this evidence itself proves a Judge) can make a logical inference or a reasonable fact.

deduction that can prove a fact.

This could come in many forms such as through This type of evidence can also come in many forms witness testimony (which we could cal oral such as forensic evidence, physical evidence, etc.

evidence), or by showing a physical object which

proves a fact.

The table highlighted below delineates a few examples of direct and indirect evidence.

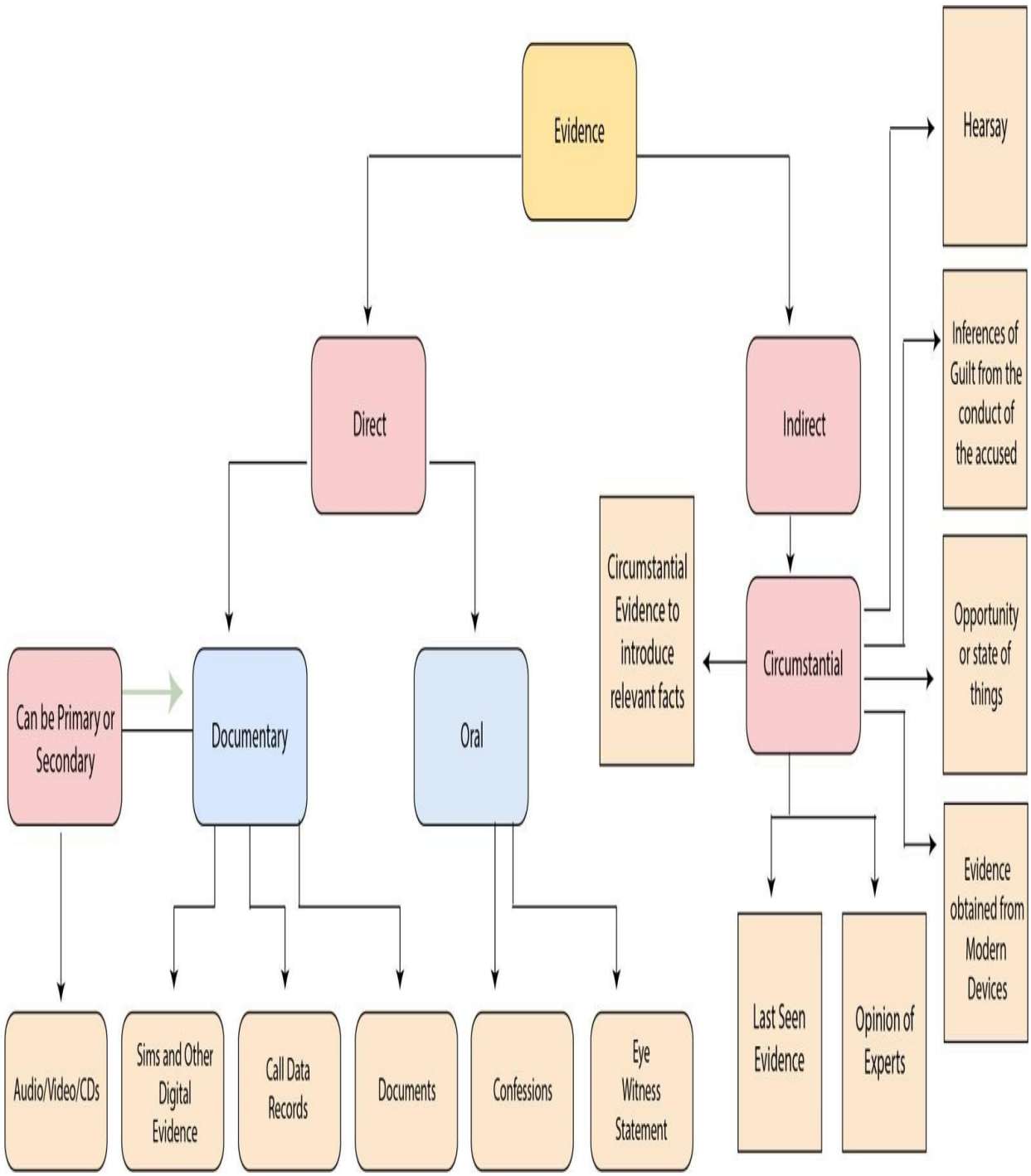
Examples of Direct and Indirect Evidence

If the fact to be proven is that A was kil ed by a 9mm pistol, then we could have a witness who testifies that he saw B shoot A with a 9mm pistol. Alternatively, we could have a 9mm bul et recovered from the body of the victim which would prove that it was indeed a 9mm pistol which kil ed the victim.

Both types of evidence would directly prove that a 9mm pistol was used to kil the victim.

For example, if the fact to be proven is that A was kil ed by B, then a witness who testifies that he heard a gunshot and then saw B running out of the room in which A was kil ed at the time the murder took place would be indirect evidence.

It is indirect as the witness did not see B actual y shooting A, which would be direct evidence. We can, however, make a logical inference from this oral evidence that B kil ed A.



Furthermore, if B's fingerprints were found on the murder weapon, that would also be considered indirect/circumstantial evidence. The fingerprints do not, in themselves, prove that B kil ed A, but they do raise a strong presumption or logical inference that B, at the very least, held the weapon that kil ed A. In this scenario forensic fingerprint evidence is the circumstantial evidence.

The table below highlights more examples of direct and indirect evidence.

DIRECT EVIDENCE

Documentary

A has signed a document or contract with C in which he has committed to murder

Evidence

B for an amount of Rs. 800,000/ and the primary contract is found as evidence.

This would be direct evidence to **prove the fact that A had contractual y agreed**

to murder B.

Witness

A witness provides oral evidence in court that he saw B plant a box in the

Testimony

marketplace and then saw that box explode.

This would be **direct evidence that B planted a bomb in the marketplace.**

INDIRECT/CIRCUMSTANTIAL EVIDENCE

Digital

Maps of the marketplace, bomb making instructions, and an ISIS handbook are found

Evidence

on the computers of both A and B.

It can be inferred that A and B were working for ISIS and had planned to detonate a

bomb in the marketplace.

Forensic

Fingerprints of A were found on bomb fragments recovered from the blast site.

Evidence

It could be inferred that A had planted the bomb at the blast site.

Witness

A witness provides oral evidence in court that he saw B place a box at the marketplace

Testimony

and then heard an explosion.

This would be circumstantial evidence which can go towards **proving the fact that B**

could be behind the explosion.

4. LEGAL FRAMEWORK OF EVIDENCE

Image 1 displays the basic skeleton of evidence

85

The fol owing table demonstrates the relevant rules/ sections applicable to the categories mentioned in the image above.

EVIDENCE

SUB- CATEGORY

RELEVANT SECTION OR RULE

Oral Evidence

Confessions

• S.21H of ATA

Art.38 of QSO

Art.39 of QSO

Art.43 of QSO

o S.164 of Cr.P.C

Witness Statement

• o Art.38 and 39 of QSO

• o S.161 of Cr.P.C

Documentary

Digital (Audio/Video (Video

Government of Sindh vs. Farad Naseem:82

Evidence

Casettes))

“The video cassette falls within the purview of 'document' for the reason that the definitions of document contained in section 29, P.P.C. and Article 2(b) of Qanoon-e-Shahadat, 1984 leave

no scintil a of doubt that video cassette squarely falls within the purview of 'matter expressed or described upon any substance by means of letters, figures or marks."

Digital (CDs/ Sims/ Cel ular

s.164 of the QSO

Devices etc.)

Sikander Ahmad Lashari vs. the State[83]

In this case the question arose whether CDs fal under the category of documents. The court answered in affirmative and stated:

".. Definition of document is much expanded and any substance by means of letters, figures or marks is document including an inscription on a metal plate. It is quite clear from the definition of CD that it is made by polycarbonate with one or more metal layers capable of storing digital information and audio and visual data is recorded as a series of metallic pits enclosed in PVC. So far as USB (Universal Serial Bus) flash

drive is concerned, it is often used for the same purposes for which floppy disks or CDs are used, i.e., for storage, data back-up and transfer of computer files. It is immune to electromagnetic interference (unlike floppy disks), and are unharmed by surface scratches (unlike CDs). The data which may be transferred on CD may also be stored/transferred on USB drives so it is only a medium and vehicle of storage that's why in

82 2002 PCr.LJ 1765 (Karachi High Court)

83 2016 YLR 62

86

our view the data stored on CD and USB flash drive is covered in the wide spread definition of document."

CDR (Cal Data Record)

- Art.164 of QSO

Documents

- Art.2(b) of QSO
- Art.72 of QSO

● S.29 of PPC

Circumstantial

Conduct of the Accused

● Art.21 of QSO

Evidence:

(Circumstantial Evidence)

● Art.27 of QSO[84]

Circumstantial evidence to

Art.22 of the QSO[85]

introduce relevant facts

Opportunity or State of things

● Art.20 of the QSO

(Circumstantial Evidence)

● Art.2(d)(i) of QSO[86]

Opinions of Experts

● Art.59 of QSO

(Circumstantial Evidence)

● Art.60 of QSO

● S.510 of Cr,P,C

Modern Devices or

● S.27-B of the ATA

Techniques

● Art.164 of QSO

(Circumstantial Evidence-

Forensic Evidence)

● *In the* ***Daniel Pearl case****[87]* ***,*** *the Karachi High Court held that cassettes, since made*

available through modern devices and

techniques, can be caught by ***Art. 164 of***

the QSO. *The court also allowed*

transcripts of DVDs and USBs to be played

in court as evidence. [88]

84 Qanoon-e-Shahadat Order 1984, a. 27

“Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, il -will or good-wil towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.”

85 Qanoon-e-Shahadat Order 1984, a. 22

“Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue, or relevant fact happened, or Which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.”

86 Qanoon-e-Shahadat Order 1984, a. 2 d (i)

“fact includes— (i) anything, state of things, or relation of things capable of being perceived by the senses”

87 *Government of Sindh v. Farad Naseem,* 2002 PCr.LJ 1765 (Karachi High Court)

88 *Sikandar Ali Lashari vs. The State,* 2016 YLR 62

87

A particularly relevant subset of indirect evidence is the use of forensic evidence and/or electronic evidence. In a terrorist offence, the use of this type of circumstantial evidence is of particular importance: **The Anti-Terrorism Act 1997 (ATA)**, **s.27-B** highlights this particular point and gives a leeway to prosecutors in terms of admitting such evidence. It also empowers the judges to convict on the basis of such evidence.

The provision reads as follows;

“ ***27B. Conviction on the basis of electronic or forensic evidence etc.*** *— Notwithstanding anything contained in this Act or Qanun-e-shahadat, 1984 (P.O.No. 10 of 1984) or any other law for the time being in force. a person accused of an offence under this Act may be convicted on the basis of electronic or forensic evidence or such other evidence that may have become available because of modern devices or techniques referred to in Article 164 of the Qanun-e-Shahadat, 1984 (P.O.No. 10 of 1984):*

Provided that the Court is fully satisfied as to the genuineness of such evidence].”

In the specific context of terrorism trials, the provision of **27-B ATA** gives an explicit reference to electronic and forensic evidence and also leaves room for the provision to expanded concurrently with that of **Art. 164 of QSO**.

Art. 164 of the QSO merely refers to the utilization of modern resources and/or techniques without explaining as to what they are. The provision is

rephrased hereunder;

"164. Production of evidence that has become available because of modern devices, etc.: *In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques."*

More recently, the Supreme Court has accepted wide powers under the same Article, 89 to make use of evidence generated by modern devices and techniques; they smoothened the procedure to receive such evidence through **Arts. 46A & 78A of QSO**, as wel as provisions of Electronic Transactions Ordinance, 2002, subject to restrictions/

limitations provided therein.

The 2013 Investigation for Fair Trial Act is the first attempt to regulate the use of evidence obtained from modern/contemporary investigative techniques in trial. The Act empowers intel igence and law enforcement agencies to conduct surveil ance and the interception of electronic and cel ular phone communication for the purposes of any investigation into an offense. According to the Act, this information, if obtained in line with the Court warrant, shal be admissible in trial. However, in practice the 2013 Fair Trial Act appears to have been interpreted, and applied in a rather restrictive manner in its approach to the use of such evidence in judicial proceedings.

5. TYPES OF EVIDENCE FOR INVESTIGATION PURPOSES

The section below discusses the fol owing aspects of evidence:

i.

What can it tel you for the purposes of Investigation (Relevance of the Evidence: inferences, links, etc.)?

i . Evidentiary Value: Accuracy and probative value of this type of evidence

i i. How to collect, package, document, transport, etc.

iv. Where to send for analysis.

v. Chal enges with using this type of Evidence.

89 *Ali Raza alias Peter vs. The State*, 2019 SCMR 1982

88

I.

ORAL EVIDENCE

As highlighted above, evidence can also be divided into categories of oral and documentary evidence as per the Qanoon-e-Shahadat. Article 2 (c) of the Qanun-e-Shahadat Order, 1984 (QSO) states that evidence includes oral and documentary evidence. Oral evidence or testimonial evidence is, “a person’s testimony offered to prove the truth of the matter asserted.” 90 Documentary evidence is, “evidence supplied by a writing or other document, which must be authenticated before the evidence is admissible.” Documentary evidence cannot be rebutted by oral evidence. 91

A document once brought on record can be given effect to by the Court even in the absence of a plea by a party to such effect. 92

Categorization of Oral Evidence and Evidentiary Value (Admissibility and reliability) One of the responsibilities of a police officer during an investigation is to record statements of witnesses under Section 161 and 162 of the Cr.PC. Section 164 of the Cr.PC governs recording of a statement by the magistrate. Al these statements are later maintained in the form of case diaries.

Evidentiary Value of Witness Statements

Oral evidence may be further sub categorized into confessions and witness testimony; the evidentiary value of each subcategory has been underlined below as wel .

Statements recorded under Section 161 may be used by the defence for the purposes of corroboration or contradicting a prosecution witness (Article 140 and 151 of the QSO) and usual y serve no purpose for the prosecution. As a general rule, statements recorded by the IO during investigation are not

admissible as evidence in court. However, the below quoted judgments cite some significant rules of admissibility for witness statements and confessions recorded during the course of investigation.

Confessions

Fol owing are the relevant sections for confessions:

•

Art.3893 and 3994 Qanoon-e-Shahadat Order, 1984; Confession before the Police According to this article a confession made to the police is not considered an admissible piece of evidence.

In *Abdul Manan v. State*95, the court held that *"Confession made before the police was not admissible in evidence"*. ***The Supreme court has also upheld this rule whereby if the main evidence relied was a***

confession before the police, with no other evidence linking strongly, the evidence was unsatisfactory. *96*

Furthermore, according to the Art.39 of Qanoon-e-Shahadat Order, 1984 confession made by an accused while in custody of a police officer wil not be considered as evidence.

90 Bryan A Garner and Henry Campbell Black, *Black's Law Dictionary* (8th edn, Thomson West) 600

91 *Mazool Hussain vs. Abid Hussain*, PLD 2008 SC 571

92 *Raza Munir vs. Mst. Sardar Bibi*, 2005 SCMR 1315

93 No confession made to a police officer shall be proved as against a person accused of any offence.

94 **Confession by accused while in custody of police not to be proved against him**: Subject to Art.10, no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate

presence of a Magistrate, shall be proved as against person 95 *Abdul Manan vs. State* (2017 PCr.LJ Quetta High Court Balochistan)

96 *Hayatullah vs. State*, 2018 SCMR 2092

•

Conditional Admissibility under s.21-H[97] of ATA

Under the normal trial process, confessions made in front of the police are not admissible under Arts. 38

and 39 of QSO. However, they have conditional admissibility under ATA. There is one place where the evidentiary requirement under QSO wil not apply i.e. under s.21-H of ATA 1997. This is because of the notwithstanding clause specified under s.21-H. The section mentions that in case of a reasonable assumption of conviction of the accused, any confession made by the accused during investigation without being compel ed, before a police officer not below the rank of a District Superintendent of Police, may be admissible in evidence against him if the Court so deems fit. In Muhammad Latif v. The State[98], the Court held that statements of the prosecution witnesses made during extra-judicial confession were found consistent and the accused had not been able to shake their credibility. It was said by the Court that since there was no hindrance in the chain of custody of circumstantial evidence and since the extra-judicial confession was credible, the extra-judicial confession corroborated the circumstantial evidence and consequently the plea by the accused was dismissed and the death penalty was upheld by the Supreme Court.

•

Art.43 of QSO

In *Mobashar Ahmad vs. State*[99] , **t**he Supreme Court held that in a joint trial, if a confession of one accused was proved under Art.43 of the QSO, the same might be taken into consideration as circumstantial evidence against the co-accused.

•

S.164 of Cr.P.C; Judicial Confession

In *Tanveer Ahmed vs. The State**100**,* the High Court held that if a judicial confession is honest, is voluntary and is made without fear or duress it can be made the sole basis for a conviction. Furthermore, such a confession does not lose its evidentiary value even if the same is retracted if it gets independent corroboration from a direct and indirect source of evidence (1992 SCMR 754). Retracted Judicial confessions have been further discussed under the category of circumstantial evidence.

•

Dying Declarations

Dying Declarations are statements made by a dying person about the cause or the circumstances relating to his or her death. Any witness who heard such a statement can relate such statement before the Court, even though the rule against hearsay general y bars witnesses from relating before courts the statements of others. In that sense, dying declarations constitute a recognized exception to the general rule 97 *Notwithstanding anything contained in the Qanoon-e-Shahadat, 1984 (President's Order No.10 of 1984) or any other law for the time being in force, where in any Court proceeding held under this Act the evidence (which includes circumstantial proceedings held under this Act the evidence*

) produced raises the presumption that there is a reasonable probability that the accused has committed the offence, any confession made by the accused during investigation without being compel ed, before a police officer not below the rank of a District Superintendent of Police, may be admissible in evidence against him if the Court so deems fit;

Provided that the District Superintendent of Police before recoding any such confession, had explained to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against his and that no District Superintendent of Police has recorded such confession unless, upon questioning the person making it the District Superintendent of Police had reason to believe that it was made voluntarily; and that when he recorded the confession, he made a memorandum at the foot of such record to the fol owing effect.

98 *Muhammad Latif vs. State* (2008 PLD SC. 503)

99 *Mobashar Ahmad vs. State*, 2009 SCMR 1133

100 *Tanveer Ahmed vs. The State*, 2011 PCr.LJ 677 KHC

prohibiting hearsay evidence. Dying declarations are admissible as evidence under Article 46 (1) of the Qanun-e-Shahadat 1984. 101 They are admissible even if made oral y.

II. DOCUMENTARY EVIDENCE

Categorization of Documentary Evidence and its Evidentiary Value

Documents

Al the other forms of documents also fal under the ambit of documentary evidence. The fol owing rules/sections are relevant to their evidentiary value:

Art.2(b) and Art.72 of QSO

Art.2(b) of QSO states that "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. Whereas Art.72 of QSO states that documents may be proved to be either primary or secondary from of evidence.

This principle [Documentary evidence cannot be rebutted by oral evidence] applies only to the extent that the

“contents of a document” are concerned.

In the case of *Bashir Ahmad vs. Muhammad Bakhsh*102, the Court said that *“the word “evidence” cannot be restricted merely to the statement of a party or to any one specific witness. It wil include the statements of all the*

witnesses recorded by the Court and the documents produced during trial". Similarly in the case of *Mazool Hussain vs. Abid Hussain*[103], it was said by the Court that *"Documentary evidence cannot be rebutted by oral evidence."* In *Raza Munir vs. Mst. Sardar Bibi*[104], the Court held that *"a document once brought on record can be given effect to by the Court even in the absence of a plea by a party to such effect"*.

Digital (Audio/Video/CDs) obtained under Section 164 of the QSO

Documentary evidence is further categorized into digital evidence. Mentioned below are the relevant sections/ rules pertinent to admissibility of digital evidence in terrorism cases. It is important to note here that digital evidence includes but is not limited to evidence obtained through audio, video, CDs. CCTV footage. Mobile Devices and Sims are also part of digital evidence but fal in the category of digital forensic evidence.

101 Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant: Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot, be found, or, who has become incapable of giving evidence, or whose attendance can not be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: (1) When it relates to cause of death: When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which cause of his death comes into question.

102 *Bashir Ahmad v. Muhammad Bakhsh* (PLD 2016 Lah. 130)

103 *Mazool Hussain vs. Abid Hussain* (PLD 2008 SC 571)

104 *Raza Munir vs. Mst. Sardar Bibi* (2005 SCMR 131)

Case Study: *Muhammad Sadiq alias Husnain vs State*[105]

This case involved the act of possessing and using explosive substance. One co-accused confessed to the crime in front of the Judicial Magistrate ensuring complete legality of the confession. Second co-accused made his confession in front of the media during a press conference and his confession was converted onto a CD. This CD

could be used against the accused during judicial proceedings under Art. 164 Qanun-e-Shahadat. Thus, the first accused was convicted based on the documentary evidence of his confessional statements for committing the crime in front of the Magistrate. And the second accused was convicted based on his confessions in the presence of electronic and print media, the recording of which was converted into a CD by a Court Witness who appeared before trial. The court held that charges against them were produced through reliable and admissible evidence.

The judgement regarding Art. 164 of Qanun-e-Shahadat held that, *"Under the law evidence col ected through modern devices is admissible in evidence and the same can be used against the accused during judicial proceedings to determine the questions of criminal liability or as the case may be."*

The rest of the accused did not confess to the crime, nor was any cogent evidence produced by the prosecution to connect them with the crime. Therefore, their appeal was al owed and the sentence set aside.

Evidentiary Value of Emails as part of documentary evidence.

In the case of *Qurban Ali vs. The State*, the evidentiary value of an e-mail was discussed.

The prosecution has relied upon some E-mails, therefore, it is necessary to examine as to what is E-mail and related points. E-mail is an. electronic way to send and receive messages (which may include images, audio and video files) through Internet. It requires: (1) computer (other devices like Mobile may also be used); (2) Internet connection; and (3) E-mail account. If anybody wants to send or receive E-mail from his stand alone computer, then that computer should have an internal or external Modem (a hardware

device) instal ed in it. In Cyber Cafes or other such environments, a central computer has a modem instal ed and al other computers share the Internet connection through that central computer usual y cal ed Internet Server. An internet connection is obtained from Internet Service Provider (ISP). Examples of such ISPs in Pakistan are Cybernet, BrainNet, Gerry's, etc. E-mail Accounts can be divided into two types; Free and Paid. Free E-mail Accounts have limited space and personal information of the account-holders that can be disclosed to third party depending upon policy of the E-mail Service Providers (ESP).

Some examples of free E-mail Service Providers are Hotmail, Yahoo, Gmail, etc. Anyone knowing operation of computer and internet can easily create himself an E-mail account with any desired name provided that name is not already created on the server computer of the ESP, nobody can send E-mail from E-mail account of other person unless he or she knows his or her account name and especial y the password. Similarly, nobody can read the E-mails of other person without knowing his/her password. However, anyone can send E-mail to any other person if he or she knows E-mail account name of the other person; password of the receiving person is not required for this purpose. The receiver of an E-mail can put filters on some known undesirable E-mail accounts to restrict them from sending E-mail. Paid E-mail accounts have more space, security and other features. Most of the ISPs also provide free or paid E-mail Accounts.

105 *Muhammad Sadiq alias Husnain vs State,* 2016 PCrLJ 1390 Lahore High Court 92

There are several free software tools available on Internet which can trace back the IP Address of the Sender through the header text of the E-mail received. After getting the IP of the sender, the concerned ISP can be contacted to get further information (i.e. the telephone line which was used by the IP at that particular date and time of the E-mail sent). The address of the telephone holder/owner can obtained from PTCL/NTC. In this way the E-mail sending computer can be identified and the data of the E-mail can be retrieved from it by using Computer Forensics Tools. It is also possible to prove it in Court of Law provided proper chain of custody of maintained. However, it is difficult to identify the particular person who sent the E-mail; this is the area where investigation by some police agency is required. There

is no law by which Cyber Cafes are required to keep record of persons using the computer of cafes, therefore, Cyber Cafes do not keep record of the persons using computers there, nor do they keep history of data for long.

The prosecution had produced E-mails sent by David Brown to Mr. Memon of C.P.L.C. Neither said Memon nor David Brown had been examined to prove the said E-mails. An E-mail address can be created by anybody under any name, therefore, the person who created the E-mail address is required to be examined in Court so as to prove its authenticity otherwise it wil adversely effect the authenticity of the E-mail. Further, the E-mail must have been mailed through a computer by using internet, which can be connected through a telephone. The E-mail could have been traced through the telephone number to track the identity of the person who sent the E-mail.

The prosecution did not take any efforts to prove the authenticity of the E-mails in accordance with law. As such, they were not relied upon, hence the same were discarded.

III. PHYSICAL EVIDENCE

Physical Evidence also referred to as real evidence or material evidence, is any material object that plays some vital role in the investigation. It is introduced as evidence in the trial to prove a fact based on the object's **physical characteristics**106. Under Pakistani law, the terminology of physical evidence is rarely used and this is in fact a term or type of evidence, recurrently used in the American Judicial System.

"Physical evidence however, can includes one's fingerprints, handwriting, vocal characteristics, stance, stride, gestures or blood characteristics" 107. Thus forensic evidence especial y where the physical characteristics of trace evidence are essential to trace the culprit behind the crime, fal under the larger category of physical evidence.

Under American law, in the renowned case of Pennsylvania v Muniz, the U.S Supreme Court distinguished between physical evidence and testimonial evidence.

Physical Evidence vis-a-vis Testimonial Evidence

Pennsylvania v Muniz

In this case, Muniz was arrested for driving while under the influence of alcohol on the Pennsylvania Highway.

Without informing him of his Miranda rights that includes the *right to remain silent (protection against self incrimination- 5th amendment)*, he was taken to the Booking Centre, where his actions and statements were videotaped. He was asked several questions and he made several incriminating statements while he performed his sobriety and Breathalyzer tests. Muniz's counsel argued that since Muniz's was not read out his Miranda rights he 106 "Real Evidence." *Wikipedia*, Wikimedia Foundation, 4 July 2018, en.wikipedia.org/wiki/Real evidence.

107 *United States v. Velarde-Gomez*, 269 F.3d 1023, 1032-33 (9th Cir. 2001).

was protected from incriminating himself under the 5th amendment and the video and audio tapes should be inadmissible as evidence.

The Supreme Court however issued a verdict on the subject while differentiating between testimonial and physical evidence. The court stated that the 5th amendment only protects the accused in light of testimonial evidence rather than physical evidence. Hence al incriminating evidence drawn from the physical evidence would be admissible but evidence drawn from the content of statements that relate to factual information would not be inadmissible. 108

Hence, Muniz's answers to direct questions were not rendered inadmissible because the slurred nature of his speech was incriminating. Moreover, his incriminating utterances and Breathalyzer tests were not prompted by an interrogation within the meaning of Miranda and hence did not warrant suppression. 109. Thus, any evidence that demonstrates physical characteristics and is not communicative in nature fal s under the broad category of physical evidence.

In the United States v. Velarde-Gomez, the U.S Court of Appeals for the Ninth Circuit held that

“physical evidence includes one’s fingerprints, handwriting, vocal characteristics, stance, stride, gestures or blood characteristics.” 110

With the use of real evidence, care must be taken to offer probative evidence that “does not pose a risk of unfair prejudice” 111 To avoid unfair bias, certain rules have been established by the American judicial system and must be fol owed if such evidence were to be admitted. For example, the prosecution ought to demonstrate a connection

“between an instrument or article introduced and if the article is relevant to the particular case and that the object is in the same condition as it was when it was used in connection with the crime.” 112 Moreover, articles connected with the crime, such as weapons or clothing may be introduced as real evidence if the prosecution can prove that there was a connection between the properly authenticated article and the accused.

The party offering an item in evidence bears the burden of presenting sufficient evidence to corroborate a finding that the matter in question is what the party claims and the onus rests upon the prosecutor to prove that the physical evidence produced is authentic by either having a witness identify the item or he/she could establish a chain of custody that indirectly “ establishes the identity and integrity of evidence’113 There are four general rules in American law for the admissibility of real/ physical evidence i.e. 1) establishment of a chain of custody, 2) necessity 3) relationship to a crime and 4) proper identification. 114

Distinction Physical and Documentary Evidence

A piece of evidence is not documentary evidence, if it’s presented for some purpose other than the examination of the contents of the document. For example, if a blood-spattered letter is introduced solely to show that the defendant stabbed the author of the letter from behind as it was being written, then the evidence is physical 108 https://www.oyez.org/cases/1989/89-213

109 https://www.oyez.org/cases/1989/89-213

110 *United States v. Velarde-Gomez*, 269 F.3d 1023, 1032-33 (9th Cir. 2001).

111 *Criminal Evidence*, Jefferson L. Ingram, 10th Edition, 2009, Pg 584,

112 ibid

113 supra note 39, 542

114 ibid

evidence, not documentary evidence." However, if the content of the same letter is used as evidence to corroborate motive for murder, then the evidence is documentary and not physical. 115

Sometimes, the physical characteristic such as the handwriting of the author of a letter may be used to connect the crime to a criminal. If the content of the letter is proving the motive of accused to murder the victim, the handwriting may be examined by an expert, to connect a suspect to the letter. In this case the letter can be used as both physical and documentary evidence.

IV. CIRCUMSTANTIAL EVIDENCE

Circumstantial evidence can play an extremely important role in a criminal trial and when utilized correctly can be of immense benefit to the prosecution's case. In the context of terrorism cases circumstantial evidence assumes an even greater importance since direct evidence is rarely available. This section attempts to explain circumstantial evidence and its underlying principles. In doing so, reliance has been placed on jurisprudence of the superior Courts of Pakistan, which requires the prosecution to present circumstantial evidence as an unbroken chain, for a conviction to be recorded in crimes entailing capital punishment.

Definition of Circumstantial Evidence

Circumstantial evidence is indirect evidence or oblique evidence. **Four principles** are to be considered in order to prove a case on the basis of circumstantial evidence:116

1. Circumstances

from which

conclusion was to

2. Al facts should

be drawn should

be consistent with

be ful y

hypothesis.

established.

4. Circumstances

should lead to

3. Circumstances

moral certainty

should be of a

and actual y

conclusive nature.

exclude every

hypothesis, but

one proposed to

be proved.

Principle 1: Circumstances from which conclusion was to be drawn should be ful y established If there is a case of kidnapping for ransom and circumstantial evidence in the form of cal data record, last seen evidence and the recovery of incriminating evidence have been produced before the court, principle one wil be established if the circumstantial evidence has been produced and utilized in an effective manner.

115 Forensic Investigation Handbook by Sindh Police, Sharjil Kharal, 2015

116 *Muhammad Arshad vs. State*, PCr.LJ 2008 FSC 1019

Principle 2: Al facts should be consistent with hypothesis

Al the facts of the case must also support the inference of the guilt of the accused and the circumstances should be such that establish the guilt of the accused beyond reasonable doubt and establish a complete chain of evidence.

The court should be satisfied that the accused is guilty. Only then wil the core principles of circumstantial evidence be established. The Supreme court has noted "*where there are two parts of occurrence and first part of the occurrence is precursor in continuity to the second, such that both occurrences are inseverable to each other, can be validly taken into consideration.* " 117

Principle 3: Circumstances should be of a conclusive nature

Each piece of circumstantial evidence should be supported by independent corroboration. It has to be one complete chain of evidence and must be so complete that it cannot leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must show that in al human probability the act must have been done by the accused. 118 The accused has a heavy onus to furnish an explanation for the existence of circumstantial evidence.

The onus cannot be discharged by merely hinting at "possibilities" or "suggesting remote hypothesis". 119

Principle 4: Circumstances should lead to moral certainty and actual y exclude every hypothesis, but one proposed to be proved.

Principal y, different pieces of circumstantial evidence must establish one unbroken chain, where one end of it touches the dead body and the other the neck of the accused. Any missing link in such chain, can break the whole chain and no conviction could be recorded in crimes entailing capital punishment. Courts have to therefore take extraordinary care and caution before relying on circumstantial evidence. To justify the inference of guilt of an accused person, the circumstantial evidence must be of such quality that is incompatible with the innocence of the accused; if circumstantial evidence is not of such standard and quality, it would be highly dangerous to rely upon the same when awarding capital punishment.

a. Relevance of Circumstantial Evidence

There is often a lack of direct evidence in terrorism cases, since there are no eyewitnesses and the case of the prosecution is reliant upon establishing circumstantial evidence. The Supreme Court has noted that in such a scenario the evidence should be like a chain connecting the accused with the commission of the offence and if a single link of that offense is missing, it shatters the case of the prosecution. 120

Circumstantial evidence is accepted as a valid form of evidence under Pakistani law. However, jurisprudence indicates that the Pakistani courts have set a high standard for relying on circumstantial evidence, especial y in cases involving a capital offence. The approach of the Pakistani courts towards circumstantial evidence can be gleaned from the fol owing principles set out in case law:

Case Study: *Fayyaz Ahmad vs. The State*121

- In cases involving circumstantial evidence, it is imperative for the prosecution to provide al links in an unbroken chain, where ‘one end of the same touches the dead body and the other the neck of the accused’. Against this backdrop, it becomes obligatory for the investigating officers to ensure that the chain of custody remains intact.

117 *Ali Raza alias Peter vs. The State,* 2019 SCMR 1982

118 *Dr. Iftikhar vs. The State* (2015 YLR 1319)

119 *State vs. Manzoor Ahmad* (PLD 1966 SC 664)

120 Dawn, 'The Missing Link in Terrorism Cases' (2011) <https://www.dawn.com/news/613003/the-missing-link-interrorism-cases> accessed 14

December 2017.

121 2017 SCMR 2026

● To carry a conviction on capital charge it is essential for the courts to deeply scrutinize circumstantial evidence because fabricating of such evidence is not uncommon. Therefore, a minute and narrow examination of circumstantial evidence is necessary to secure the ends of justice.

Case Study: *Akbar Ali Shah vs. State* 2014 YLR782

● Where a case is based on circumstantial evidence such as last seen evidence, recovery of stolen goods, recovery of incriminating material i.e. weapons of offence, pointation of dead body at instance of accused, recovery of articles belonging to the deceased etc., it is necessary to establish on record that every piece of circumstantial evidence fits in with another piece of such evidence in the chain and corroborates each other.

● The role of the police in col ecting evidence against the accused was very important and it was to be seen that the same was handed over to the prosecution department in order to avoid the chain of custody from being broken.

Case Study: *Nadeem Hussain vs. The State* 2019 SCMR 1290

● Confession before the police was inadmissible in evidence in normal cases but in cases of terrorism, S. 21-H of the Anti-Terrorism Act, 1997 had made

such a confession before the police conditional y admissible

● Condition placed by the said section upon admissibility of a confession before the police was that there must be some other evidence, including circumstantial evidence, which must reasonably connect the accused person with the al eged offence before such confession was accepted by a court worthy of any consideration.

Case Study: *Hamid Mahmood vs. The State* 2013 SCMR 1314

Background

The case involved kidnapping for ransom and homicide. Incriminating material was found on the accused upon his arrest by the Investigation Officer. The accused made an extra-judicial confession to the crime of kidnapping for ransom and murder of the deceased during the investigation. There were several pieces of circumstantial evidence that corroborated the extra-judicial confession of the accused.

Circumstantial Evidence in this Case

The fol owing circumstantial evidence was available in this case:

● Extra-judicial confession by the accused during investigation

● The prosecution produced a witness who saw the deceased with the accused on a motorcycle. This was the last time the deceased was seen alive (last-seen evidence).

● Telephone cal demanding ransom was traced and proved to have been from a Public Cal

● Office, operated by P.W. 6, who stated that he saw the accused at the relevant time of making such cal .

● Recovery of dead body.

● Articles of the deceased and other incriminating materials were found with the accused upon arrest.

Main Findings of the Court

The apex Court noted that the overal features of occurrence, nature of offence and events leading thereto, including motives are relevant. The Honorable Court held that there is no rule of law which dictates that a death sentence cannot be awarded in the absence of direct ocular evidence if the guilt of the accused has been proved beyond reasonable doubt.

The prosecution witnesses were neither related to the complainant nor inimical y deposed towards the accused, therefore their evidence was believed by the Court.

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In light of the above, the Court upheld the conviction of the accused on the basis of circumstantial evidence.

Key Lessons

● Last seen evidence, tracing of phone conversation, recovery of dead body, and discovery of articles of deceased are crucial elements of circumstantial evidence, which help build a strong chain of evidence.

● Recovery of incriminating articles from the accused at the time of arrest was used in evidence.

● Circumstantial evidence such as extra-judicial confession and telephone cal was strengthened after corroboration by prosecution witnesses.

● The Courts are more likely to depend upon the testimony of the witness if they are not an interested witness i.e. not related to the complainant, accused or the case in anyway.

● Hence, special care should be taken to include neutral/non-partisan witnesses in recovery memo’s

● Hence, special care should be taken to include neutral/non-partisan witnesses in recovery memo’s Case Study: *Syed Ali Raza Shah vs. The State*, 2014 PCr.LJ 1308 KHC

Background

The case involved kidnapping for ransom and homicide of a boy and involved two accused persons. The case did not involve any direct evidence in the form of ocular testimony etc. but contained several different pieces of circumstantial evidence.

Circumstantial Evidence in this Case

The fol owing circumstantial evidence was available in this case:

a. The co-accused had made an extra-judicial confession in this case whereas the accused had not.

b. The prosecution witnesses had specifical y claimed that the co-accused confessed his guilt in their presence and also narrated the manner of the incident; wherein he expressed that it was he who closed the mouth of the deceased minor boy.

c. The said extra-judicial confession of the co-accused was further strengthened by his subsequent act of leading the police to his house from where the dead body of the boy was recovered at his pointation.

d. Medical evidence also supported the extra-judicial confession of the co-accused.

Main Findings of the Court

The Court held that an absence of ocular evidence was not a reason to acquit and that conviction can be awarded on the basis of circumstantial evidence, as long as the same is connected with al the aspects of the commission of the offence by the accused person. Each piece of circumstantial evidence perfectly fitted in another and made out a chain which was held to be sufficient to convict the co-accused.

Key Lessons

- Conviction can be based on circumstantial evidence in the absence of ocular evidence, i.e. direct evidence.

● Circumstantial evidence has to form a complete chain of evidence.

● Extra-judicial confession made by accused fal s under circumstantial evidence and is strengthened by corroborating it with medical evidence and testimony of prosecution witnesses (if applicable).

● Recovery and pointation of the dead body and presence of dead body in the house of the accused fal s under the category of circumstantial evidence and not direct evidence.

● The prosecution was well-prepared in this case and accurately placed their findings on record through the use of exhibits.

● Mashirnamas of place of incident, recovery of dead body and arrest of accused were al produced in Court as exhibits. Furthermore, separate mashirnama were produced and exhibited relating to the visit of place of incident, visit of other place of murder and recovery of shirt of deceased.

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Case Study: *Tanveer Ahmed vs. The State*, 2011 PCr.LJ 677 KHC

Background

The accused abducted the victim and after murdering her, disposed of her body parts in different places. The accused cal ed the complainant (father of the deceased) to ask for ransom amount after the homicide.

After his arrest, the accused had voluntarily made a judicial confession before the Magistrate and the same was recorded as per the rules and procedures under Sec. 164 and Sec. 364 Cr.P.C wherein the accused had narrated al the facts. However, the accused later on retracted the confession.

Circumstantial Evidence in this Case

The judicial confessional statement was corroborated by independent evidence, such as, recoveries on the pointation of the accused and pointation of the place where the head of the deceased and other articles were thrown

by the accused. *Mashirnamas* of the same were produced in Court as exhibits.

Main Findings of the Court

The Sindh High Court held that the circumstantial evidence produced by the prosecution was trustworthy and inspired confidence. The Court relied on a judgement by the Supreme Court which stated that it is wel settled that if a judicial confession rings true and is voluntary it can be made the sole basis for conviction. The magistrate had no nexus with the prosecution so the judicial confessional statement was voluntary and was made without any duress, coercion or pressure.

Furthermore, such a confession does not lose its evidentiary value even if the same is retracted if it gets independent corroboration from direct and indirect evidence (1992 SCMR 754). Based on the above, the High Court upheld the sentence of death.

Key Lessons

● Confessions before a Magistrate duly recorded under Sec. 164 and Sec. 364 Cr.P.C have a high value before the Court even if they are subsequently retracted if the Magistrate has no nexus with the prosecution of the case and there is no evidence of duress, coercion or pressure.

● Confessions do not lose their value even if retracted if they are corroborated by direct and indirect evidence.

Circumstantial evidence can be used to corroborate a retracted confession and retain its evidentiary value.

Case Study: *Mobashar Ahmed vs. The State*, 2009 SCMR 1133

Background

In the case involving a homicide of a taxi driver by two persons, both of the accused, along with two unknown persons were seen boarding a taxi of the deceased from the taxi stand by the prosecution witness - an auto-electrician, who used to repair taxis. The witness had no relationship/enmity with the

accused. Upon arrest, one of the accused made an extra-judicial confession implicating the other accused (Mobashar Ahmed). The car of the deceased was recovered from the accused Mobashar Ahmed upon his arrest, which was compatible with the extra-judicial confession of the other accused. Arrest of the accused also led to the recovery of the dead body of the victim.

Circumstantial Evidence in this Case

The fol owing circumstantial evidence was available in this case:

a. Extra-judicial confession by one of the accused implicating the other accused.

b. Last-seen evidence by prosecution witness.

c. Recovery of the dead body at pointation of the accused.

d. Recovery of the victim’s car from the accused upon arrest.

Main Findings of the Court

The Supreme Court held that in a joint trial, if a confession of one accused was proved under Article 43 of the QSO, the same might be taken into consideration as circumstantial evidence against the co-accused. Additional y, the last seen evidence has been corroborated by the recovery of the deceased’s body at the pointation of accused only he had the knowledge of the location.

With respect to the testimony of the prosecution witness, the Court noted that mere relationship is no reason to disregard evidence of any witness if his testimony otherwise inspires confidence.

Key Lessons

● In a joint trial, extra-judicial confession of a co-accused can be used against the accused as circumstantial evidence if proven under Article 43 of the QSO.

● In this case, circumstantial evidence in the form of last seen evidence, lead and pointation by the accused, extra judicial confession by co-accused, recovery of the deceased's car from the accused at the time of arrest coupled with direct evidence (eyewitness testimony of the prosecution witnesses) was sufficient to convict the accused.

Case Study: *Manjeet Singh vs. The State*, PLD 2006 Supreme Court 30

Background

The petitioner Manjeet Singh was arrested by Mujahid Force near Kasur Border in the territory of Pakistan and was handed over to the Intelligence Battalion, Lahore for interrogation. At the time of arrest, the petitioner was found in possession of a fake Pakistani National Identity Card.

During the course of interrogation, it emerged that the petitioner was a resident of Amritsar, India. He further stated that he was trained by Indian Military Intel igence (IMI) and RAW (Research and Analysis Wing) and was sent to Pakistan for spying and terrorist activities. The petitioner on showing his wil ingness to make a confessional statement was produced before the Cantt Magistrate Lahore and the Magistrate after observing the legal formalities, recorded his confessional statement under Section 164 Cr.P.C. The confession contained details of al three occurrences for which he was separately tried. The accused however later retracted the judicial confession in his statement made under S. 342 Cr.P.C.

Circumstantial Evidence in this Case

The fol owing circumstantial evidence was available in this case:

a. Possession of a fake Pakistani National Identity Card;

b. Retracted judicial confession;

c. Site-plan on the basis of retracted judicial confession;

d. Motive of terrorism through subversive activities to achieve the evil design of creating unrest in Pakistan.

Main Findings of the Court

Several guidelines and principles relating to circumstantial evidence, corroborating the validity of confessions were set out by the Supreme Court of Pakistan in this important case. The guidelines are set out below: a. The Supreme Court held that it is not prudent to base a conviction in a criminal case merely on the strength of a retracted confession without independent corroboration. The Court is under an obligation to inquire into al the material points and surrounding circumstances to satisfy itself regarding the truthfulness and voluntariness of the confession.

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b. Interestingly however, the Court held that it is not an inflexible rule that a retracted confession cannot be made the basis of conviction without independent corroboration. Instead, the rule of corroboration is a rule of abundant caution which is insisted only to exclude any possibility of doubt relating to the guilt of a person.

c. A retracted confession can be legally taken into consideration against the maker, if the Court is satisfied about its voluntary character and truthfulness.

d. A confession must not only be voluntary but it must also be true. To ascertain its truthfulness it is necessary to examine and compare the confession with the rest of the prosecution evidence to exclude any probability of any doubt, qua its true character.

e. The accused had exclusive knowledge of the facts relating to the occurrences in which he caused bomb blasts and had disclosed the same in his confessional statement, when he was brought before the Magistrate from the custody of an Intel igence Battalion of Pakistan Army. Since his involvement in the cases came to the notice of the police only subsequent to the recording of his statement by the Magistrate, there was no possibility of the confessional statement being tutored.

f. The accused did not lodge any complaint of torture or coercion before the Magistrate or Trial Court and did not complain of being kept in il egal custody. The accused merely denied making a confession before a

Magistrate. A mere denial of the accused would neither affect the admissibility of the confessional statement nor reduce its evidentiary value.

g. Moreover, the Court held that an objection regarding the delay in recording the confessional statement was of no significance in cases of terrorism as long as the confession is found true and voluntary.

h. Moreover, the Court held that oral testimony of eye-witnesses, who were victims of the occurrences as wel as circumstantial evidence of recovery of fake Pakistani identity card from the accused. Additional y, the motive of terrorism through subversive activities to achieve the evil design of creating unrest in Pakistan, had sufficiently affirmed the truthfulness of the confessional statement.

i.

The witnesses who had sustained injuries in the occurrences identified the accused in Court and had no personal motive to make a false statement against him. Furthermore, no element of bias or malice could be pointed out towards the Army or Police officer who interrogated the accused or the Magistrate who recorded his confessional statement.

j.

The Magistrate in his statement before the trial Court deposed that he had warned the petitioner before recording his statement that the same could be used against him as evidence and by putting certain questions; informed him that he was not bound to make any statements. The Magistrate also deposed that he got the petitioner’s handcuffs removed and sent al the persons, including police officials out of the Court, providing the petitioner a free atmosphere and sufficient time to think about whether he should or should not make the confession and that having observed all legal formalities and satisfying himself that the petitioner has volunteered to make a confession, recorded his statement.

k. The court held that neither any direct evidence was available and nor would it be fair to expect such evidence in a case of subversive activities to maintain conviction.

l.

Supreme Court noted that the confession coupled with the other circumstantial evidence on the record had unerringly and indubitably brought home the charges to the accused.

Key Lessons

● The Supreme Court stated that it would be unfair to expect direct evidence in cases involving subversive activities against the State to maintain conviction.

● Legal formalities observed by the Magistrate in recording confessional statement under Section 164 Cr.P.C.

strengthened the value of this confessional statement.

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● A judicial confession which is retracted does not lose its evidentiary value and can be relied upon as evidence if the Court is satisfied about its truthful and voluntary character. As a rule of caution however, it should be corroborated by other evidence. But this requirement of independent corroborating however, is not an inflexible rule.

● A confession must not only be voluntary but it must also be true and to ascertain its truthfulness it is necessary to examine and compare the confession with the rest of the prosecution evidence to exclude any probability of any doubt qua its true character.

● An objection regarding the delay in recording the confessional statement was of no significance in cases of terrorism as long as the confession is found true and voluntary.

● The statements of eye-witnesses affirmed the reliability of the accused's confessional statement. Any possibility of the witnesses possessing biased or ulterior motives was dismissed.

Case Study: *Muhammad Azam Bhatti v The State*, 2020 YLR 1058 KHC

Background

The case involved the homicide of the accused's mother with his motive being expressed in an extra-judicial confessional statement to his father. Later on, he recorded his statement under S. 164 of the Cr.P.C, admitting to the murder of his mother.

The case included ocular testimonies by two of the cousins of the accused person with the addition of several pieces of circumstantial evidence. The extra-judicial confession, in this case, was sufficient enough for awarding the conviction of the accused.

Circumstantial Evidence in this Case

The fol owing circumstantial evidence was available in this case:

● The recovery of the bloodstained churri and the hatchet that were used as weapons of the murder as per the pointation of the accused.

● The extra-judicial confession made by the accused in front of his father.

● The ocular evidence by the cousins of the accused stated that the deceased was last seen in the house with the accused.

● The medical evidence col ected after an evaluation of the deceased's body supported the claim that the injuries were caused by a sharp cutting weapon. This was corroborated by the confession of the accused as wel .

Main Findings of the Court

The Karachi High Court found that the credibility of the witness statements made by the cousins of the accused depended on whether there was personal enmity between the two parties or not. Since there was no enmity between the accused and his cousins, the Court found the statements of the witnesses to be trustworthy and reliable.

Additional y, the Court found that the confessional statement of the accused was recorded in a proper manner that fol owed al the legal formalities of the Judicial Magistrate.

Hence, the Court found the strong circumstantial evidence to be in favour of the prosecution - beyond the shadow of reasonable doubt. In light of the above, the Court upheld the decision of death sentence to the accused, al owing no mitigating circumstances to lessen the sentence.

The appeal was dismissed under section 302(b) of the Pakistan Penal Code.

Key Lessons

● The reasonable inference that if the deceased was last seen with the accused at the place of occurrence of the crime, he would automatical y be responsible for the crime was sufficient for a conviction.

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● Extra-judicial confession made by the accused fal s under circumstantial evidence and not direct evidence.

● Circumstantial evidence such as the extra-judicial confession made by the accused can be corroborated by medical evidence, witness statements and the weapons of crime.

● A mere retraction of the extra-judicial confession is not sufficient to discard it from the consideration by the Court

Typology of Evidence in Terrorism Specific Cases

Unique terrorist offences are characterised by similarly distinctive evidence that may be relied upon in terrorism trials. The tables below il ustratively outline the type of evidence that is likely to be found, discovered, traced, and thereafter, relied upon in court, in isolated cases of terrorism.

OFFENSE

TYPE OF EVIDENCE

KIDNAPPING FOR

•

Extra-judicial confessions of the accused or co-accused.

RANSOM

•

Last-seen evidence.

•

Human biological trace evidence (hair, DNA, saliva, blood, semen).

•

Forensic chemical evidence (drugs or chemicals).

•

Micro-traces (glass, non-human biological traces, fibres, textiles).

•

Digital and document evidence.

•

Biometric evidence (fingerprints, ear prints etc.).

•

Articles of the kidnapped and/or other incriminating evidence found on the body of the accused.

•

Transcript of cal demanding ransom.

•

Identification of the location where the cal was made.

•

Proof that the sim from which the ransom cal was made belonged to the

accused.

HOMICIDE

•

Extra-judicial confessions of the accused or co-accused.

•

Medical forensic evidence such as the recovery of the dead body of the victim.

•

Last seen evidence.

•

Human biological trace evidence (hair, DNA, saliva, blood, semen).

•

Forensic chemical evidence (drugs, chemicals and explosives).

•

Micro-traces (fire, glass, paint, non-human biological traces, fibres, textiles).

•

Bal istics (guns, ammunition and gunshot residue).

•

Digital and document evidence.

•

Biometric evidence (fingerprints, ear prints etc.).

•

Articles of the deceased and/or other incriminating evidence recovered from the accused.

BOMBINGS

•

Extra-judicial confessions of the accused or co-accused.

•

Medical forensic evidence (human body and toxicology).

•

Human biological trace evidence (hair, DNA, saliva, blood).

•

Forensic chemical evidence (chemicals and explosives).

•

Micro-traces (fire, glass, paint, non-human biological traces, fibres, textiles).

•

Bal istics (guns, ammunition and gunshot residue).

•

Digital and document evidence.

•

Biometric evidence (fingerprints, ear prints etc.).

•

Real evidence (objects).

•

Recovery of other incriminating material from the accused.

TERRORISM FUNDING

•

Extra-judicial confessions of the accused or the co-accused.

•

Digital and document evidence.

•

Biometric evidence (fingerprints, ear prints etc.).

•

Real evidence (objects).

SPYING AND INTENTION

•

Extra-judicial confessions of the accused or the co-accused.

TO COMMIT TERRORIST

•

Possession of identity documents.

ACTIVITIES

•

Site plan on the basis of retracted judicial confession

•

Motive of terrorism through subversive activities

b. Domestic Legal Framework: Circumstantial Evidence

THE QANUN-E-SHAHADAT ORDER 1984

Article 18

Evidence may be given of facts in issue and relevant facts.

Article 19

Relevancy of facts forming part of same transaction.

Article 20

Facts which are the occasion, cause or effect of facts in issue.

Article 21

Motive, preparation and previous or subsequent conduct.

Article 22

Facts necessary to explain or introduce relevant facts.

Article 23

Things said or done by conspirator in reference to common design.

Article 24

When facts not otherwise relevant become relevant. Facts not otherwise relevant are relevant

Article 34

Proof of admissions against persons making them, and by or on their behalf.

Article 40

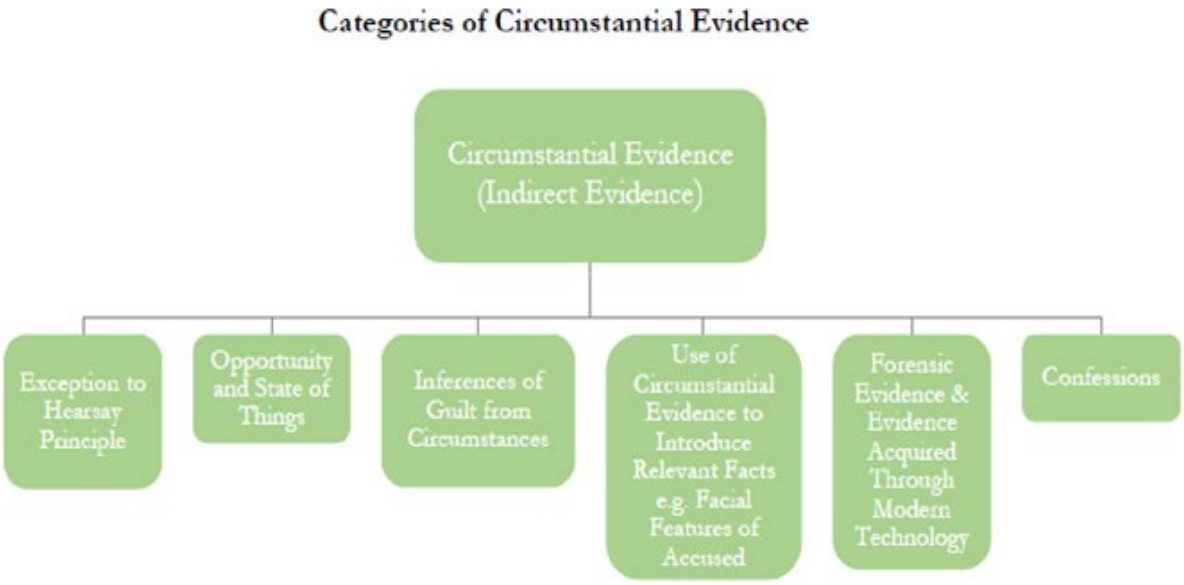
How much of information received from accused may be proved.

Article 43

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

Article 59

Opinions of experts.


Categories of Circumstantial Evidence
Circumstantial Evidence (Indirect Evidence)
Exception to Hearsay Principle
Opportunity and State of Things
Inferences of Guilt from Circumstances
Use of Circumstantial Evidence to Introduce Relevant Facts e.g. Facial Features of Accused
Forensic Evidence & Evidence Acquired Through Modern Technology
Confessions

THE CODE OF CRIMINAL PROCEDURE, 1898

Section 164

Power to record statements and confessions.

Section 342

Power to examine the accused.

Section 364

Examination of accused how recorded.

Section 509

Deposition of medical witness.

Section 510

Report of Chemical Examiner, Serologist etc.

Article 540

Power to summon material witness or examine persons present.

c. Categories of Circumstantial Evidence and its evidentiary value

Categorization of Circumstantial Evidence

Under the domestic legal framework, circumstantial evidence, as shown in the table below above can be broadly categorized into:

Evidentiary Value of Circumstantial Evidence

A) Inferences of guilt from Circumstances

Sometimes circumstances such as the conduct of the accused may lead the investigation team towards crucial evidence, important in connecting the crime to the accused. Examples of such a conduct may be possession of the fruits of a crime or recovery of evidence due to pointation by accused.

CIRCUMSTANTIAL

RELEVANT RULE OR SECTION

ADMISSIBILITY AND EVIDENTIARY VALUE

EVIDENCE

Exception to hearsay

Article 19 of the QSO

The general rule is that hearsay evidence is not admissible as

principle

evidence. However, Article 19 of the Order al ows for the

admission of hearsay evidence in the form of circumstantial

evidence under the principle of *res gestae* to prove the guilt of the accused. The only condition is that it should be closely connected to the charge against the accused.

Some facts or events which might be hearsay but related to the al eged incident were admissible in evidence under the principle of res gestae. 122Therefore, evidence of a witness as to what the witness heard immediately at the time of the incident would be admissible under the principle of *res gestae* even if it was hearsay. 123 However, the court wil refuse to admit evidence that is devoid of res gestae. 124

In cases where a child witness was also the victim of the crime and was unable to depose in the court room, and his evidence was "necessary" to find the truth, and the same had a ring of "circumstantial trustworthiness" attached therewith, the Courts may consider the out-of-court evidence thereof, as an exception to the "hearsay rule." 125

Opportunity and

Article 20 of the QSO

Circumstantial evidence which shows the opportunity available

State of things

to the accused to commit the crime is admissible as evidence

under Article 20.

In high court cases, evidence has been admitted showing

whether there was opportunity on part of defendant for the

crime. The court in a riot's case of *Muhammad Imran vs. The*

State[126] held, because the defendants had the opportunity to shoot but they did not, so the prosecution's case failed to prove

motive. Similarly, in a case that dealt with a minor *Khadija*

Siddiqui vs. Shah Hussain, the court considered the state of

things and relaxed the witness testimony as the witness was a

minor and may have been overwhelmed. [127]

The fol owing are admissible as circumstantial evidence under

Article 20:

•

Opportunity to Commit the Crime: facts which afford an

opportunity for the occurrence of the facts in issue or

relevant facts are relevant. Proof of opportunity possessed

by the accused to commit a crime may give rise to an

122 *Shahzad vs. Rana Qamar,* 2019 YLR 2508 SC AJK

123 Sameeullah Khan *vs*. The State and another (2000 P Cr. LJ 769 Peshawar High Court).

124 *Rajab Ali vs. The State*, 2018 MLD 1979 KHC

125 *Raja Khurram Ali Khan vs. Tayyaba Bibi*, PLD 2020 SC 146

126 2019 YLR 1139 LHC

127 PLD 2019 SC 261

inference that he/she committed the crime. Exclusive opportunity is not necessary.

•

The accused should be given an opportunity to explain his or her presence at the scene of occurrence (AIR 1952 Al . 796). The plea of alibi is also relevant under Article 20.

•

State of things under which the offence took place: For example, a murder is committed, and the murder trial is taking place. During the trial evidence is admitted, which shows that the murder was committed when the weather became cloudy and the electricity failed. Therefore, such evidence shows the circumstances surrounding the commission of the crime.

•

Recording of a relevant conversation: The recording of a conversation between persons and of speeches is admissible as evidence under article 20.

•

Footprints.

Inferences of Guilt

Art.21 of QSO

The value of such conduct is dependent upon the facts and

from Circumstances

circumstances of each case. 128 A person's conduct includes the

(Conduct of the

commission and omission of an act, 129 and the accused's

Accused)

conduct is enough for proving guilt. 130 It may also include statements, 131 and may be antecedent or subsequent to the fact in issue or relevant fact. 132

Muhammad Bilal vs. State133:

"Running away from the scene of occurrence can be considered as an indication of the guilt of the accused. However, the value of such conduct as evidence, is dependent upon the facts and

circumstances of each case"

AIR 1963 Ori 58; 1963 (1) Cr.LJ 310:

"Statements which explain the conduct of the accused are admissible as evidence."

Use of circumstantial Art 22 of the QSO

In the absence of direct evidence in the form of ocular

evidence to introduce

testimony, circumstantial evidence can be used to prove the

relevant facts

identity of the accused.

Dilawar vs. The State[134] defined the scope of Art. 22:

identification might become a strong corroborative evidence in

128 *Muhammad Bilal vs. State*, PCr.LJ 2011 FSC 1062

129 AIR 1917 Cal. 746; ILR 43 Cal. 323

130 *Abdul Ali vs. Saath Muhammad*, YLR 2017 BHC 2183

131 AIR 1941 Al .145; 193 IC 873

132 AIR 1960 Cal.494

133 PCr.LJ 2011 FSC 1062

134 2020 PCr.LJ 619 KHC

favour of prosecution, if the descriptions of the accused were given by the complainant or witnesses in FIR or in their statements; however, in absence of any description of the accused persons given in the body of FIR, the identification of culprits could stil be used to connect a suspect with the commission of offence, when the role played by the accused had been described in FIR and reiterated at the time of identification without any exaggeration

Forensic evidence and Art 59 and Art 164 of the QSO,

Section 59

evidence acquired

Section 510 and 540 of the

through modern

CrPC

Evidence of expert is weak type of evidence and is only

technology

confirmatory or explanatory of direct or circumstantial

(CCTV, CDR etc.)

evidence. 135

Section 164

“Production of evidence that has become available because of modern devices, etc.: In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.

Cal Data Record (“CDR”)

According to Art.164 of QSO, production of evidence through modern devices or techniques can be used as circumstantial evidence if the court deems it to be appropriate. In the case of *Abdul Razzaq vs. The State*136 , the Court held in this case that “*petitioner/accused had every right to prove himself innocent by making use of the very same call data record”*.

Closed Circuit Television (CCTV)

With regard to (CCTV) footage, it has been held that, pursuant to the insertion of Article 164, the evidence col ected through modern devices is admissible as valid. 137 However, the mere production of CCTV footage as a piece of evidence in Court is not sufficient for the Court to rely upon that evidence unless it is proved to be authentic. In order to prove the authenticity of such footage, it is incumbent upon the prosecution to examine the person who recorded or downloaded the footage. 138

135 *Khadim Hussain Khutrio vs. State,* 2019 PCr.LJ 1001 KHC

136 *Abdul Razzaq vs. The State* (2016 PCr.LJ)

137 *Babar Ahmad vs. The State, 2017 YLR 153 [Gilgit Baltistan Chief Court].*

138 *Asfandyar vs. Kamran, 2016 SCMR 2084.*

Art. 164 of QSO In the case of *Arsalan vs. the State*, 139 the pivotal piece of evidence obtained was SIMs and Cal Data

Record140 of the accused that corroborated the accused's

statements.

Due to the importance of digital evidence in ATA cases,

maintaining the chain of custody for evidence can be crucial for

an investigation and admissibility greatly depends on it. In this

context, a consideration by the court is whether or not there is

evidence to support the fact that the digital evidence col ected

has been maintained and stored in safe custody.

Evidentiary Value of Cal s/Text Messages from the Accused's

Phone

Jurisprudence of the superior judiciary highlights the issues

relating to using CDR as evidence against the accused. Some

cases also elaborate upon how the accused can utilize CDR to

their benefit to discredit the case of the prosecution.

2018 MLD PHC 1654 (*Faheem Khan vs. The State*)

The accused had exhibited his Mobile DATA and Mobile Data of the complainant which negated the version of the prosecution as at the time of arrest accused was not having any mobile with him as stated by prosecution witness.

2018 YLR 1092 KHC (*Salman Alias Lamba and Another vs. The State*)

Investigation Officer had col ected the Cal Data Record (CDR) of the mobile phones recovered from the possession of the accused and completed the process of verification of the SIMs and National Identity Cards issued by National Data and Registration Authority. However, the evidence of Police Officials was not trustworthy as no evidence had been produced to satisfy that the recovered cel phone SIMS were kept in safe custody. Record showed that there was no verification from the mobile companies as to the legal ownership of the SIMs nor the persons in whose names such SIMs were issued were interrogated by the investigating officer.

2016 YLR PHC 25 (*Sabir Shah vs. Muhammad Usman and*

another)

Record showed that the hand written SMS attributed to the

accused and the data of the SIM recovered from the spot owned

139 *Arsalan vs. The State* (2018 MLD 894 Karachi)

140 Note* In case of CDR the manner and procedure through which the CDR is obtained is pivotal in determining its evidentiary value 109

by the deceased assailant did not tal y with the CDR record. SIM

record had not been scientifical y downloaded, printed and

tal ied.

Section 510

Report of Chemical Examiner, Serologist etc. Any document

purporting to be a report, under the hand of any Chemical

Examiner or Assistant Chemical Examiner to Government [or of

the Chief Chemist of Pakistan Security Printing Corporation,

Limited] or any Serologist, finger print expert or fire-arm expert

appointed by Government upon any matter or thing duly

submitted to him for examination or analysis and report in the

course of any proceeding under this Code, may without cal ing

him as a witness, be used as evidence in any inquiry, trial or

other proceeding under this Code:

Provided that the Court may [if it considers necessary in the

interest of justice] summon and examine the person by whom

such report has been made.]”

Article 540 Cr.P.C

“Power to summon material witness or examine persons

present. Any Court may, at any stage of any inquiry, trial or other

proceeding under this Code, summon any person as a witness,

or examine any person in attendance, though not summoned as

a witness, or recal and re-examine any person already

examined; and the Court shal summon and examine or recal

and re-examine any such person if his evidence appears to it

essential to the just decision of the case.”

Article 21 of the QSO

Inferences of Guilt from Circumstances (Article 21)

Evidence or facts which can raise an inference of guilt of the accused or help prove his/her guilt are admissible under Article 21 of the QSO . 141 The onus then lays on the accused to prove otherwise, and failure to prove such can be used against them. 142 Such facts/evidence normal y involve information which can prove: i.

The motive of the accused;

i . The preparation of the offence by the accused;

i i. Conduct of the accused.

141 *Arbab Tasleem vs. The State,* PLD 2010 SC 642

142 *Muhammad Amin vs. State, 2000 SCMR 1784*

110

INFERENCES OF

GUILT FROM

CIRCUMSTANCES

Motive

Preparation

Conduct of

Accused

Motive in cases of circumstantial evidence

Motive does not assume much importance in cases where there are direct eye-witnesses whose evidence is trustworthy and acceptable. 143 However, if there is no direct evidence of an offence and the Court has to infer the guilt, from the circumstances, the question of motive becomes vital. If the motive is disproved or even reasonably doubtful, it is of great benefit to the accused. Where the prosecution fails completely to prove motive and evidence regarding the guilt is not cogent and convincing, the accused must be acquitted. 144 In a recent case, the Supreme Court held that the motive set out in the FIR was vague and during trial the eye-witnesses set forth a different motive so accused was acquitted. 145

In cases where there is only circumstantial evidence and the direct evidence is absent and the evidence shows that the accused had a strong motive and opportunity to commit the crime. There is also no reasonable possibility of anyone else being the real culprit, then the chain of evidence can be considered to be so complete as to show that within al human probability the crime must have been committed by the accused. 146 The Supreme court overturned a High court decision of discarding a motive based on past incident. 147 It is crucial to note that even with the absence of motive, if the

Court is satisfied that the circumstances only lead to the conclusion of the accused's guilt, that by itself may be enough to secure conviction. 148

Case Study: *Shams Khan vs. The State, through Advocate-General Azad Jammu and Kashmir and others*, 2017 PCr.LJ

Note 116

The Court held that motive plays an important role in the case of circumstantial evidence and it is not essential to prove motive in the case of direct evidence.

Preparation

Premeditated crime is essential y preceded by a motive but also by preparations for the commission of the offence.

Possession of means of committing a crime such as for ex. picklocks, combustible matters, suspicious weapons or materials are important facts. 149 Any fact which shows that preparation was undertaken for any of the elements of the crime, is relevant under Article 21 of QSO. The probative force, both of preparation and of the previous attempts manifestly rests on the presumption that an intention to commit the offence was framed in the mind of the accused.

143 1994 Cr.LJ 2584 at 2588

144 AIR 1960 Mad. 370

145 *Muhammad Ilyas vs Ameer Ali,* 2020 SCMR 305

146 AIR 1972 SC 54; 1 SCJ 408

147 *Fayyaz Ahmed vs. Muhammad Khan,* 2020 SCMR 281

148 Gul Nawab Khan vs. The State, PLD 1980 Peshawar High Court 193; AIR 1966 SC 1322

149 Arthur P. Wil , *A Treatise on the Law of Circumstantial Evidence: Il ustrated by Numerous Cases* (T & JW Johnson & Co 1896) 74

111

Such evidence is relevant under Article 21 of the QSO. 150 The preparation on part of the accused may be to accomplish the crime, to prevent discovery of crime or to aid the escape of the criminal and avert suspicion.

Conduct of the accused

The second paragraph of Article 21 of the QSO relates to the conduct of any person who is a party in a criminal prosecution. 151 Conduct of an accused prior to the incident, contemporaneous with it or subsequent to it is relevant under Article 21 of the QSO. 152 Circumstantial evidence being based on the facts relating to occasion, cause, or effect, motive, preparation and previous or subsequent conduct which always led to certain logical consequences, legal presumption could be drawn under Arts.21 & 129 of the QSO. 153

False Alibi

Previous Conduct

Silence of Accused

ED

Suppression/Destruction

of Evidence

F ACCUS

Threat

T O

Abscondence

CONDUC

Possession of Fruits of

Crime

Lead & Pointation by

Accused

Statement Explaining

Conduct

i.

Previous conduct (attempt)

Previous attempts to commit the offence also fal under the ambit of Article 21 QSO. 154 For instance, evidence has frequently been admitted of other transactions where previous attempts have been made to commit the same crime but unsuccessfully. 155

i . Threat

It is common for persons who have been engaged or are about to engage in crime to boast or make statements about actions they have undertaken or plans to undertake actions of serious mischief. Such declarations or allusions are of 150 AIR 1971 Mad.194; 1971 Cr.LJ 615

151 AIR 1962 Cal. 504; 1962 (2) Cr.LJ 354

152 1980 Cr.LJ 71

153 *Muhammad Bux vs. The State,* 2015 YLR 519 KHC

154 AIR 1971 Mad.194; 1971 Cr.LJ 615

155 Arthur P. Wil , *A Treatise on the Law of Circumstantial Evidence: Il ustrated by Numerous Cases* (T & JW Johnson & Co 1896) 68

great significance, when clearly connected by independent evidence and such evidence is admissible in criminal cases. A threat to do a criminal act is relevant. When the accused has threatened an injury to another, that or a similar injury afterwards happens, the fact of the threat is relevant. 156

i i. Abscondence of accused

One of the elements that can be taken as evidence of the accused's guilt is that of abscondence. 157 The fol owing case law il ustrates the approach of the Pakistani Courts on the issue of drawing an inference of guilt based on the absconding conduct of the accused.

a. In *Mir Qadayaz vs. State*, the abscondence and absence of the accused for about two years after the occurrence was held to be tantamount to conduct for the purposes of Article 21 of the QSO by the Peshawar High Court. The Court held that it could be used as corroborative evidence against the accused.

However, it is not sufficient by itself to prove the guilt of the accused. 158 Similarly, the Supreme court also held that abscondence wil be termed to be corroborative, wherein ocular account was further corroborated by the abscondence of the accused as he remained fugitive from law and had to be declared a proclaimed offender. 159

b. It is crucial to note that abscondence is equal y consistent with guilt and innocence. Even though an accused person may be innocent, he / she may stil flee so that the ordeal of a criminal trial may be avoided.

This principle has been reiterated by the Supreme Court on multiple occasions. 160

c. A mere statement of the superintendent that the accused was not present in the locality is not sufficient to prove abscondence. It must be established before the Court that continuous watch was kept at the house, office and places that he/she frequents. 161

d. Furthermore, if a plausible explanation has been offered by the account explaining the reason for absence then it is not considered sufficient to bring home guilt to an accused. 162 According to the Supreme Court,

“People stay away from law for a verity of reasons not necessarily compatible with hypothesis of guilt, to avoid impending wrath of opponents in hostile environments, more often than not compel even the innocent into recusal of safety.” 163

e. Where abscondence is taken as an incriminating piece of evidence, the accused should be questioned in that regard in the course of their statement recorded under S. 342 Cr.P.C, thereby enabling him to explain his position. 164

f. In *Muhammad Bilal vs. State*, the accused ran away from the place of occurrence on hearing the voice of the complainant party. The Court held that this amounted to intentional avoidance since running away from the scene of the occurrence be considered an indication of the guilt of the accused. However, the value of such conduct depends upon facts and circumstances of each case. 165

iv. Possession by the accused of connecting evidence

Another factor based on conduct on which an inference of guilt can be made under Article 21 of QSO is the possession by the accused of the ‘fruits of the crime’. Domestic jurisprudence on this aspect provides the fol owing guidelines: 156 AIR 1970 GOA 96

157 *Muhammad Bilal vs. State*, PCr.LJ 2011Federal Shariat Court 1062

158 *Mir Qadayaz vs. State*, Pcr.LJ 1989 Peshawar High Court 1511

159 *Farman Ali vs. The State*, 2020 SCMR 597

160 *Aminullah vs. The State*, PLD 1976 SC 629; *Muhammad Aslam vs. State*, 1969 PCr.LJ Supreme Court 885

161 AIR 1970 Bom 438; 1970 CrLJ 1622

162 *Jehanzeb vs. The State*, PLD 1982 Peshawar High Court 136

163 *Wajeeh ul Hassan vs. The State*, 2019 SCMR 1994

164 *Zafar Iqbal vs. The State*, 2000 YLR 1897

165 *Muhammad Bilal vs. State*, 2011 PCr.LJ Federal Shariat Court 1062

a. If the accused is in possession of the fruits of the crime it can raise a strong inference of guilt. 166

b. However, the possession of property connected to the offence is not positive proof and does not relieve the case of its circumstantial character. 167

c. If eyewitnesses saw the accused committing the offence and he/she later appears in front of law enforcement agencies with the weapon of offence and blood-stained clothes, such evidence is admissible as evidence of the conduct of the accused. 168

v. Inconsistent statement by the accused

If the accused has given false, inconsistent or contradictory statements, this also raises an inference of guilt. 169

vi. Lead and Pointation by the accused

If the accused discloses the places where the weapons used for the offence were concealed by him or her, the production of these weapons is relevant under Article 21 of QSO. 170 Such evidence is admissible irrespective of whether it was as a result of inducement by the police. 171 The statement of accused at the time of pointing out or producing may come within the province of Article 21. 172 Disclosure 'made by accused in police custody leading to the incriminating recoveries amounted to their conduct which fel within the scope of Art. 21 of the QSO and was admissible in evidence. 173

Shah Jahan vs. State, 2012 YLR Quetta High Court 1355

The recovery of the dead body from the wel on the pointation of the accused led to full corroboration of the last seen evidence. Furthermore, if a statement is made by the accused without recovery, it is also relevant for the purposes of Article 21 QSO, even though no recovery has been made. For e.g. if the accused takes the police to the shop of X, where he/she claims he bought the weapon of offence, that is relevant for the purposes of Article 21. [174]

Key lesson

There is a distinction between the conduct of an accused under Article 21 of the QSO and a statement of the accused under Section 161[175] of Cr.P.C which is qualified by Section 162 of Cr.P.C. Section 162[176] Cr.P.C excludes statements given during the course of investigation and not the evidence relating to the conduct of an accused person.

166 AIR 1965 Ori 175;1965 CrLJ 520

167 *Faulkner v. State*, 15 Tex. Crim. App. 115 cited in Arthur P. Wil , *A Treatise on the Law of Circumstantial Evidence: Il ustrated by Numerous Cases* (T & JW Johnson & Co 1896) 78

168 1994 Cr.LJ(Mad) 2584 at 2589-90

169 AIR 1962 Cal. 504; 1962 (2) Cr.LJ 354)

170 AIR 1958 Mad. 451; 1958 Cr.LJ 1196

171 ILR 31 Al .592 (FB); AIR 1957 MB 33

172 AIR 1963 Ori 58; 1963 (1) Cr.LJ 310

173 *Ajab alia Rajab vs. The State, 2004 MLD 180 KHC*

174 AIR 1972 SC 975; 1972 Cr.LJ 606

175 Examination of witnesses by police. (1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Provincial Government may. by general or special order, prescribe in this

behalf, acting on the requisition of such officer, may examine oral y any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shal be bound to answer al questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police-officer may reduce Into writing any statement made to him in the course of an examination, under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.

176 Statements to police not to be signed: Use of statements in evidence. (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shal , if reduced into writing, be signed by the person making it; nor shal any such statement or any record thereof, whether In a police-diary or otherwise or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

Provided that, when any witness is cal ed for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by 'section 145 of the Evidence Act. 1872. When any part of such 114

So, for example, if the accused takes the police to a site where he/she claims the dead body was buried by him/her, such a statement is admissible under Article 21 of QSO. However, this wil not qualify as a statement under Section 161 Cr.P.C. Statements under Section 161 Cr.P.C are excluded under Section 162 Cr.P.C but statements under Article 21 QSO, being distinct in nature, can be used as circumstantial evidence against the accused.

vi . Preparation of false alibi

If the accused has prepared a false alibi it wil also raise an inference of guilt. Such an inference must be corroborated with further evidence in order to secure conviction. 177

vi i. Silence of the accused

It is a general rule with limited exceptions that an innocent party wil be able to explain suspicious or unusual appearances, connected with the accused person, conduct, or dress and that a desire to prevent incrimination wil prompt the accused to do so. If the accused can furnish a reasonable explanation, it goes in favour of the accused. 178

The silence of an accused when charged with an offence despite being cal ed on to contradict the accusation raises an inference of guilt. However, this inference can only be drawn where there is no other reasonable explanation.

Silence in such circumstances amounts to conduct. 179

ix. Suppression, fabrication, destruction of evidence

The suppression or destruction of evidence is always considered to be a significant prejudicial circumstance. It leads to the inference that if the evidence that has been destroyed was produced before a Court, it would be unfavourable to the accused.

x. Last Seen Evidence

Such type of evidence without corroboration is considered a weak type of circumstantial evidence to base a conviction upon. 180 When coupled with other types of circumstantial evidence it can help build a strong case for the prosecution.

Guidelines by the Superior Judiciary in Pakistan on Last Seen Evidence

In 2017, the Supreme Court of Pakistan *Fayyaz Ahmad vs. The State* set out the fundamental principles relating to last-seen evidence which the prosecution was legal y obliged to adhere to. 181

a. There must be cogent reasons that the deceased in a normal and ordinary course was supposed to accompany the accused and those reasons must be palpable and *prima facie* furnished by the prosecution.

This means that there must be a valid reason, proved by the prosecution, as to why the accused was last seen accompanying the deceased.

statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in public interests, it shal record such opinion (but not the reasons therefore) and shal exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shal be deemed to apply to any statement fal ing within the provisions of section 32, clause (1). of the Evidence Act, 1872 [or to affect the provisions of section 27 of that Act].

177 AIR 1956 SC 460; 1956 Cr.LJ 827

178 *A Treatise on the Law of Circumstantial Evidence: Il ustrated by Numerous Cases* (T & JW Johnson & Co 1896) 104

179 AIR 1951 Ori 53

180 *Zafar Abbas vs. State*, 2010 SCMR 939 Supreme Court

181 *Fayyaz Ahmad vs. The State*, 2017 SCMR 2026

b. The proximity of the crime scene played a vital role because if within a short distance the deceased was done to death then, ordinarily the inference would be that he did not part ways or separate from the accused or the accused getting away from him.

c. The timing when the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from the accused getting away from him.

d. There must be some reasons and objects on account of which the deceased accompanied the accused towards a destination, otherwise deceased being in the company of the accused would become a question mark.

e. There must be some motive on the part of the accused to kil the deceased otherwise the prosecution had to furnish evidence that it was during the transit that something abnormal or unpleasant happened which motivated the accused to kil the deceased.

f. Quick reporting of the matter without any undue delay was essential, otherwise the prosecution story would become doubtful because the last seen evidence was tailored or designed falsely to involve the accused person.

g. Last seen evidence must be corroborated by independent evidence, coming from an unimpeachable source because uncorroborated last seen evidence was a weak type of evidence in cases involving capital punishment.

h. The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude al possible doubts.

i.

If the murder was not pre-planned and calculated, the Court had to consider whether the deceased had any contributory role in the cause of his death.

Allah Ditta vs. Crown, SC 1969 SCMR 558, 1969 PCr.LJ 1108

The deceased was last seen alive in the company of the accused shortly before the time she was presumed to have met her death, near the place of occurrence. The accused failed to furnish an explanation. It is reasonable to infer that the survivor was responsible for her death.

Case Study: Mobashar Ahmad vs. State, 2009 SCMR 1133

Background

This case involved a homicide of a taxi driver by two persons. Both the accused along with two unknown persons were seen boarding a taxi of the deceased from the taxi stand by the prosecution witness who was an auto electrician and used to repair taxis. The witness had no relationship/enmity with the accused. One of the accused upon arrest made an extra-judicial confession implicating the other accused (Mobashar Ahmed). The car belonging to the deceased was recovered from the accused Mobashar Ahmed upon his arrest which was compatible with the extrajudicial confession of the other accused. Arrest of the accused also led to the recovery of the dead body of the victim.

Circumstantial Evidence in this Case

The fol owing circumstantial evidence was available in this case:

a. Extra-judicial confession by one of the accused implicating the other accused.

b. Last-seen evidence by prosecution witness.

c. Recovery of the dead body at pointation of the accused.

d. Recovery of the victim’s car from the accused upon arrest.

Main Findings of the Court

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The Supreme Court held that in a joint trial, if a confession of one accused was proved under Article 43 of the QSO182,

the same might be taken into consideration as circumstantial evidence against the co-accused. Additional y, the last seen evidence has been corroborated by the recovery of the deceased’s body at the pointation of accused as he alone had exclusive knowledge of the location.

With respect to the testimony of the prosecution witness, the Court noted that mere relationship is no reason to disregard evidence of any witness if his/her testimony otherwise inspires confidence.

Key Lessons

● Last seen evidence is general y considered a weak type of circumstantial evidence.

● Coupled with other types of circumstantial evidence, last seen evidence can contribute towards a strong case for the prosecution.

● In this case, circumstantial evidence in the form of last seen evidence, lead and pointation by the accused, extra judicial confession by co-accused, recovery of the deceased's car from the accused at the time of arrest coupled with direct evidence (eyewitness testimony of the prosecution witnesses) was sufficient to convict the accused.

xi. Statement explaining conduct

Generally, Article 21 QSO does not include a statement. However, statements which explain the conduct are admissible. 183 Similarly, Article 27184 of the QSO al ows for the admission of evidence showing the state of mind of the accused, or of body or bodily feeling if it tends to explain the motive or intention, knowledge etc. This can be admitted through examples of circumstances and conduct (as explained for the purposes of Article 21, including previous attempts).

Case Study (Section 21) *Shah Jahan vs. State185* ,

The recovery of the dead body from the wel on the pointation of the accused led to full corroboration of the last seen evidence.

Furthermore, if a statement is made by the accused without recovery, it is also relevant for the purposes of Art.21, even though no recovery has been made. For e.g. if the accused takes the police to the shop of X, where he claims he bought the weapon of offence, that is relevant for the purposes of Art.21. 186

Key Lesson:

182 Consideration of proved confession affecting person making it and others jointly under trial for same offence: When more persons than one are being tried jointly for the same offence and a confession made by one of such persons is proved,-

(a) such confession shal be proof against the person , making it and;

(b) the Court may take into consideration such confession as circumstantial evidence against such other person.

Explanation: "Offence'" as used in this Article, includes the abetment of or attempt to commit the offence.

183 AIR 1963 Ori 58; 1963 (1) Cr.LJ 310

184 Qanun-e-Shahadat Order, 1984, Article 27. Facts showing existence of state of mind, or of body, or bodily feeling. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-wil or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

185 2012 YLR Quetta High Court 1355

186 AIR 1972 SC 975; 1972 Cr.LJ 606

There is a distinction between the conduct of an accused under Art.21 of the Code and a statement of the accused under s.162 187 of Cr.PC. S162188 Cr.P.C includes statements given during the course of investigation and excludes the evidence relating to the conduct of an accused person. So for example, if the accused takes the police to a site where he claims he buried the dead body, such a statement is admissible under Art.21 of the QSO. However, this wil not qualify as a statement under s.161 Cr.P.C. Statements under s.161 Cr.PC are excluded under s.162 Cr.PC but statements under

Art.21, being distinct in nature, can be used as circumstantial evidence against the accused.

Furthermore, Art.40 of the Qanoon-e-Shahadat Order72 deals with recovery of evidence pursuant to the accused providing information. This includes matters such as recovery made on pointation of the accused etc.

In *Fazal Akbar vs. The State*[189] the Peshawar High Court laid down guidelines on the application of Art.40:

● The prosecution must establish that information given by the accused led to the discovery of some fact deposed by him;

● That the discovery was of some fact which the police had not previously learnt from any other source;

● And that the knowledge of the fact was first derived from the information given by the accused. This section wil highlight how such information can be utilized by the prosecution.

Circumstantial Evidence to Introduce Relevant Facts

Art.22 of the QSO

Sometimes circumstantial evidence may be derived via the use of the technique known as identification parade.

What is an Identification Parade?

This is an investigation tool used by the police to help identify the culprit, given there is a witness. It involves lining the suspect of a crime with individuals (dummies) that match their description. A witness is then required to identify the suspect out of the individuals. ‘The identification test is normal y conducted when an accused is not previously known to the witnesses and they have his momentary glimpse. It becomes imperative to hold such test if the witnesses claim that they can identify the accused, if brought before them’. There are certain precautions and rules that need to be adhered to in such proceedings:

● List of al the persons included in the parade should be prepared, by the magistrate in charge of the test. 190

187 Examination of witnesses by police. (1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Provincial Government may. by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shal be bound to answer al questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police-officer may reduce Into writing any statement made to him in the course of an examination, under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.

188 Statements to police not to be signed: Use of statements in evidence. (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shal , if reduced into writing, be signed by the person making it; nor shal any such statement or any record thereof, whether In a police-diary or otherwise or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

Provided that, when any witness is cal ed for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by 's.145 of the Evidence Act. 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in public interests, it shal record such opinion (but not the reasons therefore) and shal exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shal be deemed to apply to any statement falling within the provisions of section 32, clause (1) of the Evidence Act, 1872 [or to affect the provisions of section 27 of that Act].

189 *Fazal Akbar vs. the State* (2013 PCr.LJ 369)

190 2016 YLR 1891

● When a witness identifies a member of the parade, the Magistrate should note in what connection he is identified, including incorrect identifications.

● Objection or statements by the accused or witnesses to be recorded and power of magistrate to decide objections

● It must be ensured that the accused is not exposed to the witnesses

● No communication is al owed that would facilitate the identification of the accused before the proceedings. The identity of the accused should be concealed to ensure that the accused should is not seen by the witnesses before the identification parade191

● There must be capacity and ability of the eyewitness to identify the accused. 192

● It must be verified that the people including the suspect in the identification parade are handcuffed or are wearing fetters

● The accused is produced before the magistrate with a muffled face

● At the time of the parade the accused is to be mixed up with dummies in minimum ratio of 1-8; the dummies must be of a similar description.

● The names, parentage, address and occupations of the dummies must be incorporated into the memo of the identification test[193]

● The suspect shal be placed among other persons in the ratio of 8-9 strangers to one suspect. Each person brought should be of a similar description and should be of the same religion and social status as the suspect. Each witness shal then be brought up separately for identification purposes[194]

● Each accused should have a separate identification parade[195]

● The conduct of such proceedings must be in line with Art.22 of the QSO[196].

Evidentiary Value of Identification Parade

Kamal Din alias Kamala vs. The State[197]

Ruling

Art. 22---Test identification parade---"*Identification of an accused person without reference to the role allegedly played by him during the occurrence was shorn of any evidentiary value.*

2017 SCMR 135

"In the identification parade, if the accused is identified without any reference to the role played by them in the incident in issue, then such a test identification parade is legally laconic and is of no evidentiary value".

Impact of Delay in conducting the Identification Parade

191 2011 SCMR 537

192 *Mian Sohail Ahmed vs. The State,* 2019 SCMR 956

193 *Adnan vs. The State* (2018 MLD 43)

194 2017 SCMR 1546:

195 *Lal Pasand vs. The State*

The Court in this case held, *"the only safeguard against il egal convictions is that the Judge or Judges hearing the case should be conscious of the dangers inherent in the identification of accused by witnesses who are total strangers to them. The proper course in such cases is to have separate identification parades for each accused. And, no explanation has been given in the instant case for not holding separate identification parades."*

196 2016 PCr.LJ 1584: *Identification parades are conducted under Art. 22 of the Qanoon-e-Shahdat 1984 for a two-fold purpose: The first is to establish the identity of the accused and second is to rule out the possibility of false implication of the accused by the complainant/witnesses for any il designs.*

197 2018 SCMR 577

119

2017 PCr.LJ 662198

The delay in conducting the identification parade may expose the witness to the accused and hence may compromise the credibility of the procedure of the Identification Parade.

Case Study

Sarmad was a young boy of age 11 who was abducted as he fol owed his father to the mosque for prayers. The family realized the missing child at around 9:00 pm on the 4th of July 2020. An FIR was lodged at 10:00 pm claiming that Sarmad had been abducted for the commitment of an unnatural offence. At 11:00 pm, the family received a ransom cal on their mobile claiming that Sarmad was in their custody with a demand for a ransom of Rs 10,00,000 in return for his life. The family immediately informed the police who tracked the number to the locality and began the search.

On 6th July, Afzal and Arshad witnessed that Sarmad was with Shahzad and Furqan on a motorcycle. On 7th July, the police received information about a dead body, in a nearby locality, of a boy aged 10-11 years. The inspector and Sarmad's father rushed to the spot and identified the dead body of Sarmad. Cause of death was concluded to be death by strangulation.

During further investigation, more evidence has come to light. First was that Furqan confessed to their crime in front of Naveed Mahmood, the local MPA, and Saeed Natt. The confession stated that he and Shahzad had abducted Sarmad for ransom and then murdered him due to non-payment. After the confession, during the arrest, police also found other incriminating articles in Shahzad's house. The cal was traced to a local public office, and the operator Qasim Ali testified that Shahzad made use of the P.O. at the same time to which the cal was traced back to. An identification parade was also held by the police to identify the footprints of two accused under the supervision of Special Judicial Magistrate. On receipt of identification proceedings, the accused were sent to judicial lock-up and after completion of the usual investigation. Furqan took the plea of being juvenile and so wil be incriminated on a separate challan.

How Information Acquired from the Accused can be Used?

Article 40 of the QSO199 deals with recovery of evidence pursuant to the accused providing information. This includes matters such as recovery made on pointation of the accused etc. . For example, Recovery of weapon on the pointation of accused is admissible in evidence under Art. 40 of the QSO

Case study: *Rashid Aslam vs. State*, 2017 YLR 2052 KHC

Background

The prosecution's case was that the son of the complainant was al egedly abducted by the accused and co-accused for ransom; he was later murdered by them. The record showed that after the arrest both accused led the police to the place where they had thrown the dead body of the son of the complainant. Both the accused had led police to the house where they had confined the deceased. The place was pointed out by both accused separately. This was duly reflected in the *mashirnama* which was prepared in

the presence of the *mashirs*. Accused had shown the store 198 *Identification parade was conducted after about ten days of the arrest of the arrest and no explanation had come on record regarding the inordinate delay in conducting the identification parade. Hence, under this case the credibility of the identification parade was compromised.*

199 Qanun-e-Shahadat Order, 1984, Article 40. How much of information received from accused may be proved. When any fact is deposed in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

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in the house where they had committed the murder of the deceased with a wire for strangulation. The col ege identity card of the deceased was recovered from underneath the bed. Investigation Officer secured the same and prepared a *mashirnama* in the presence of the *mashirs*. Furthermore, during the investigation, the accused had shown the place where they had thrown the mobile phone, keys and purse of the deceased and a *mashirnama* was prepared accordingly. The Investigation Officer sent blood samples of the deceased and his parents for DNA Report, the Cal Data Record was col ected as wel . No explanation was furnished by the accused as to how they had knowledge of the place where the dead body was thrown.

Circumstantial Evidence in this Case

The case of the prosecution in this case was solely reliant upon establishing circumstantial evidence which included: a. Recovery of articles;

b. Pointation of the place where the dead body was thrown;

c. Pointation of the place where the mobile, key of the car and purse of the deceased were thrown; d. Pointation of the bungalow where the deceased was brought by the accused persons; and e. Recovery of the identity card of deceased.

Main Findings of the Court

The High Court was convinced by the prosecution’s case even though it was based on circumstantial evidence alone.

The circumstances established that the accused were indeed the persons who had thrown the dead body at the place pointed out by them and they had committed the murder in the house as pointed out by them. Information furnished by the accused persons to the Investigating Officer could therefore be used against them under Article 40 of the QSO.

The advocates for the appel ants contended that it was a case of joint pointation. The Court held that it appeared that the place where the dead body was thrown by the accused was separately pointed out by the accused persons.

The mere plurality of information received before discovery shall not necessarily take any of this information out of the ambit of Article 40 of the QSO. It is possible to ascribe to more than one accused the information which leads to discovery (Naresh Chandra Das v. Emperor, AIR (29) 1942 Cal. 593).

The High Court further noted that a death sentence could be awarded on circumstantial evidence provided that the guilt of the accused was established beyond a shadow of doubt and al the circumstances of the case constituted a chain and no link was missing. The combined effect of al the circumstances was sufficient to prove the guilt of the accused beyond a shadow of doubt. 200 Appeal against the conviction was dismissed.

Key Lessons

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Circumstantial evidence based on information received from the accused can lead to a conviction even in capital offences provided the proper procedures are fol owed by the investigation officer (e.g. preparing *mashirnamas* in the presence of *mashirs*) and there is no missing link in establishing the guilt of the accused.

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Plurality of information received in a case of joint pointation wil not necessarily take this information outside the ambit of Article 40 of the QSO. It is possible to ascribe to more than one accused the information which leads to discovery.

Case study: *Ajab alia Rajab vs. The State*, 2004 MLD 180 Karachi High Court

200 *Rashid Aslam vs. State*, 2017 YLR 2052 KHC

121

Background

The complainant's cousin was taken away in his jeep at gun point by the accused and the family of the abductee was asked for ransom. The Police caught the accused at the location of the PCO from where they were making cal s to the abductee's family.

Circumstantial Evidence in this Case

This case involved a large amount of circumstantial evidence, a significant portion of which came into being based on information acquired from the accused. This included:

a. During the interrogation, the accused disclosed the place of concealment of the abductee.

b. Thereafter, both the accused led the police party and *Mashirs* to a cave in a mountainous area from where the abductee was recovered.

c. The accused were produced before the Magistrate for an identification test, where the prosecution witnesses identified both the accused.

d. Both the accused also disclosed the place where the snatched jeep was parked.

e. The jeep was secured on the pointation of both the accused from that place.

f. From the jeep, both the accused separately produced the weapons which they used in the commission of the crime.

g. The police secured al these articles and prepared the *mashirnama.*

h. Audio cassette in which the conversation of the complainant and culprits were recorded was also produced before the Police which they had secured.

Main Findings of the Court

The prosecution based its case upon the ocular testimony of P. W .3 and P. W .5, which was supported and corroborated by the arrest of the accused and the substantial circumstantial evidence in this case. The Court observed that joint pointation and joint recoveries are admissible in evidence under Article 40 of the QSO, therefore, recovery of the dead body on the joint pointation of accused were found to be admissible and reliable. The accused was convicted.

Key Lessons

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Audio cassette in which the conversation and the complainant was recorded was produced in evidence which significantly strengthened the case of the prosecution.

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Recovery of incriminating evidence and the preparation of mashirnamas is crucial to establish a chain of evidence.

In the fol owing case study, the victim was kidnapped and murdered, and the prosecution based its case on the account given by the accused after their arrest supported by medical reports and witness testimonies:

Evidentiary Value of Confessions

A judicial confession is one which is made before a Magistrate or Court in the due course of legal proceedings before a Court and is recorded in

accordance with the provisions of Code of Criminal Procedure, provided under Sections 164 and 364 of the C.r.PC.

122

Extra-judicial confessions are made by the party elsewhere than before a Magistrate or in Court and are admissions of guilt receivable under Article 34 of the QSO. 201

A retracted confession is a confession which has been taken back by the accused after its making or withdrawn by the accused. It has been observed that a confession, whether judicial or extra-judicial, retracted or not retracted, if proved to be voluntary and true, can lead to the conviction of the accused on its sole basis. A confession of any kind can become the basis of conviction if it is found voluntary and true. 202

As a general rule, an extrajudicial confession while in police custody is inadmissible in evidence and cannot be read in evidence. Article 37 of the QSO stipulates that no confession made to a police officer shal be proved as against a person accused of an offence. 203

Evidential Value of Retracted Judicial Confessions in Terrorism Cases

The superior judiciary in their jurisprudence has elucidated that a conviction on the basis of retracted confessions can be awarded to an accused if the Court is satisfied that the confessional statements were true and were made voluntarily. The retracted confession either judicial or extra-judicial if found to be truthful and confidence inspiring and qualifies the test of voluntariness, can be used for conviction without looking for any other sort of corroboration. 204

Evidential Value of confession by a co-accused

Confessional statement of co-accused, retracted or otherwise, at the most may be used in support of other evidence and the proper course therefore, is to first careful y examine the entire evidence by excluding the confession and if, on the judicious and analytical examination of the evidence, the Court is of the opinion that conviction can be recorded on the basis of such evidence alone, then the confession may not be considered. Otherwise, it

may be cal ed in aid to strengthen the belief that the accused is guilty of the offence. 205 The Supreme Court has noted that in a joint trial, extra-judicial confessions of the co-accused can be used against the accused as circumstantial evidence. 206

d. Chal enges in Using Circumstantial Evidence in Terrorism Trials

Cal Data Record

201 Proof of admissions against persons making them and by or on this behalf: Admissions are relevant and may be proved as against the person who makes them or his representative-in-interest; but they cannot be proved by or oh behalf of the person who makes them or by his representative in-interest, except in the following cases: —

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that if the person making it were dead, it would be relevant as between third persons under Article 46.

(2) An admission may be proved by or on behalf of the person making it, when it consist of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

202 PLJ 2011 SC 255

203 *Muhammad Akram vs. The State*, 2001 PCr.LJ 1300

204 *Sheikh Raziuddin vs. State*, 2019 PCr.LJ 622 KHC

205 *Shazia Aslam vs. The State*, 2001 MLD 1939

206 *Mobasher Ahmed vs. The State*, 2009 SCMR 1133

Cal data records (CDR) are a vital piece of circumstantial evidence which can play a crucial role in terrorism prosecutions. In Pakistan, CDR has an uneven record in terrorism prosecutions. They are a particularly important piece of evidence in kidnapping for ransom/ *bhatta* cases under the Anti-Terrorism Act, 1997. Case law reveals that several successful convictions have been maintained by relying on incriminating CDR against the accused, especial y in kidnapping cases. 207On the other hand, case law also contains abundant examples where CDR failed to prove the guilt of the accused beyond reasonable doubt. The fol owing case law highlights some of the key omissions in presenting and utilizing CDR evidence which led the Court to dismiss it as a reliable piece of evidence.

Azeem Khan vs. Mujahid Khan, 2016 SCMR 274

This case il ustrates various mistakes made by the investigation and prosecution in presenting CDR evidence in Court, which ultimately resulted in the evidence being set aside. These included:

a. Important links in the chain of evidence set up by the prosecution were missing due to lack of corroborative evidence.

b. No voice record or transcript of cal s had been brought on record to prove the ransom demand.

c. Area from which the cal for ransom was made was not shown or identified.

d. The most crucial and conclusive proof that the cel phone from which ransom demand was made was owned by the accused and that the SIM was al otted in his name was missing.

State vs. Behram Khan, 2016 MLD 1363 Peshawar High Court

This case again il ustrates how procedural defects rendered the use of CDR inadmissible and ultimately resulted in the acquittal of the accused. These included:

a. The private CDR produced by complainant regarding tracing of cal data of accused, on the basis of which the FIR was registered, had not been placed

on file.

b. The said CDR also did not have a signature of issuing authority nor was it verified from the concerned authorities.

The learned High Court therefore held that trial Court had rightly acquitted the respondents/accused by extending them benefit of the doubt, after proper appraisal of evidence for which no exception can be taken.

Key Lessons

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Voice record and transcript of cal s have to be placed on record to prove the ransom demand in kidnapping for ransom cases.

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Area from which the cal for ransom has been made should be identified or shown.

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It should be shown in evidence that the cel phone from which the cal was made was owned by the accused and that the SIM was al otted in his / her name, especial y in kidnapping for ransom cases.

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The CDR should have the signature of the issuing authority and should be verified from the concerned authorities.

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Where a CDR is procured privately from the complainant, it should be placed on file.

Asmatullah Khan vs. The State 2019 P Cr. L J 1073

Background

This case involves homicide of a man. The accused was arrested by the police because a motorcycle was recovered from outside an elementary school that belonged to him. The record showed that the accused had contacted the 207 See Rashid Aslam vs. State, 2017 YLR 2052 KHC, Abdur Razzaq vs State 2016 PCr.LJN 77 LAHORE-HIGH-COURT-LAHORE, 2015 PCr.LJ 532 LAHORE-HIGH-COURT-LAHORE

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deceased, however, the cal data records were not proved by an expert and the rest of the evidence lacked a complete link to the murder.

Evidence obtained

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A motorcycle parked outside of the elementary school belonging to the accused. However, this was not recovered from the accused or at the pointation of the accused. Thus, this evidence was not relied upon.

•

Cal Data Record of the accused contacting the deceased. However, the records produced were not proved by an expert official and were therefore not given importance.

•

The al eged confession of the accused recorded on a USB. However, no effort was made to confront the accused with the recording by playing it in court and was therefore, discarded.

•

Statement recorded by the daughter of the accused. However, the statement was recorded 12 days after the homicide and no explanation was given for it.

Main findings of court

The court ruled that the evidence, including recovery of bike, cal data records as wel as the al eged confessions, were al insufficient and did not establish a link between the accused and the homicide. Proper procedure was not fol owed for submission of the evidence, weakening their legitimacy. The court acquitted the accused.

Key Lessons

•

Cal Data Record has to be proved through concerned expert official that is legal y authorized to record such data. Any data submitted that has not fol owed this protocol shal not be considered.

•

Al eged extrajudicial confessions recorded on electronic can be discarded by the court if the prosecution fails to confront the accused with it in court. This amounts to acquiescence.

•

Statements made in front of the police officers are inadmissible in court.

•

Medical evidence cannot be a substitute for direct evidence, rather a source of corroboration.

Il egalities Committed During Recording of Judicial Confessions

Judicial confessions play a crucial role in terrorism prosecutions in Pakistan. The case studies examined in the above section have il ustrated the high probative value placed by the superior judiciary on judicial confessions which have fol owed the proper procedures set out under the Code of Criminal Procedure as wel as High Court Rules and Orders.

Azeem Khan vs. Mujahid Khan, 2016 SCMR 274

Glaring il egalities committed by the Magistrate in recording the confession of the accused resulted in the confession being excluded from consideration by the Supreme Court of Pakistan. These included:

a. The accused was handed over to the same police officer who had produced them in the Court in handcuffs.

b. This provided premium to the investigating agency because it was thereafter, that the recoveries of the so-cal ed incriminating articles were made at the instance of the accused persons.

c. Furthermore, the Magistrate did not pose any mandatory questions to the accused persons like duration of police custody and he also did not inform that they would not be given back to the police whether they confessed or not.

In such circumstances a confession does not have legal worth and has to be excluded from consideration. The Supreme Court noted that the recording Magistrate was either unaware of the law on the subject or he was acting on the desire of the police, compromising his judicial position.

125

Il egalities committed during the process of judicial confession become even more relevant when the confession is retracted during trial. Keeping in view of the above, the Supreme Court set aside the conviction of the accused.

Al ah Warrayo vs. Mst. Laddan 2020 MLD 334

Background

This is homicide case where the deceased was al egedly murdered by several accused persons, including his wife and the man she was al egedly having il icit relations with.

Evidence

•

Confession recorded before the magistrate by the accused. However, this was discarded because it grossly disregarded the protocol of such confessions.

•

Al eged motive and opportunity for the accused to murder the deceased.

Main Findings of the Court

The court ruled that the prosecution has failed to establish its case based on several reasons such as the unexplained delay of 14 days between the al eged murder and the submission of FIR by the complainant, and that the confession recorded before the magistrate did not meet the requirements of such confessions. This included the accused being explained the situation in a language they understand, as wel as the accused not being returned to the police that brought them in. The court therefore acquitted the accused.

Key Lessons

•

The FIR must immediately be filed with the police. Plausible explanations must be produced for any delay in the submission.

•

The confession recorded by the magistrate cannot be recorded under oath. Such statements are a violation of Oaths Act.

•

The accused must not be returned to the same police that brings them to the magistrate to record a confession. Doing so violates the procedure of a judicial confession.

•

The questions put to the accused must be in a language he or she understands, and not in English.

•

It is important that the magistrate ensures that the accused is free of fear of police or otherwise.

Mehro Khan vs. Anwar 2017 P Cr. L J 244

Background

This case involves a homicide of a woman by her husband using a hatched blow to the back of her head. Based on negligence by the magistrate in recording the confession, as wel as the doubts raised about the reliability of the witness statements, the accused was acquitted by the trial court. It was taken to the High Court after an appeal filed by the complainant,

Evidence

•

Eye witness statements. However, they were compromised because the witnesses were not residents of the house and no reasonable explanation was presented for their presence there at the time. Moreover, their statements contradicted each other’s version of events.

•

Confession recorded by the magistrate. However, serious doubts were raised about the confession because the accused was kept in wrongful custody, he was not explained before the confession that he wil not be returned to the same police and that he is not bound to make any statement.

126

Main findings of court:

The court held that the trial court had rightfully acquitted the accused. This was based on the il egalities by the magistrate in recording the confessions as well as the inconsistent statements by the witnesses, and the lack of explanation for their presence at the crime scene.

Key Lessons

•

The accused must not be held in wrongful custody of the police before being produced before a magistrate for a confessional statement.

•

The magistrate must explicitly mention in his statement that he explained to the accused that he is not bound to confess, and should he choose not to, he wil no tbe returned to the same police that brought him in.

•

The magistrate must make sure that the questions asked are in a language that the accused understands.

•

The magistrate must explicitly mention that he read the confession back to the accused and ensured that he agreed with what was recorded.

•

The eyewitnesses must have a reasonable explanation for being present at the crime scene if it is not their usual place of stay.

•

The eye-witness statements must not contradict one another, and the events described must be the same.

•

The eye-witness statements must be scrutinized if the witnesses are directly associated with the complainant.

Adeel vs. State, 2016 YLR 2212 PHC

As expressed above, il egalities committed during the recording of a judicial confession by a magistrate cast doubt on the case of the prosecution.

Il egalities were committed by the Magistrate and the accused was handed over to the investigation officer instead of the Naib Court. Reference was made to the case, Sultan Muhammad etc. v. The State, wherein it was held that,

“Judicial confession cannot be said to have been voluntarily made by the accused when after recording judicial confession, the accused was handed back to Investigation Officer.

Javed Ahmed Siddiqui vs. The State, 2016 YLR 577

One of the most important precaution that the Magistrate is required to take, involves removing the fear of the Police from the mind of the confessor. In this case the Magistrate did not do so. The confessor is supposed to be assured that he wil not be handed over back to the police even if he does not make a confession.

Tanveer Ahmed vs. State (2011 PCr.LJ 677 KHC)

Background

The accused abducted the deceased girl and after murdering her, disposed of her body in different places. The accused cal ed the complainant (father of the deceased) to ask for ransom amount after the homicide.

After his arrest, the accused had voluntarily made a judicial confession before the Magistrate and the same was recorded as per the rules and procedures under Sec. 164 and Sec. 364 Cr.P.C wherein the accused had narrated al the facts. However, the accused later on retracted the confession.

Other Evidence in this Case

The judicial confessional statement was corroborated by independent evidence, such as, recoveries on the pointation of the accused and pointation of the place where the head of the deceased and other articles were thrown by the accused. The Memos of the same were produced in court as exhibits.

127

Main Findings of the Court

The Sindh High Court held that the other sources of evidence (circumstantial) produced by the prosecution were trustworthy and inspired confidence. The Court relied on a judgment by the Supreme Court which stated that it is wel settled that if a judicial confession rings true and is voluntary it can be made the sole basis for conviction. The magistrate had no nexus with the prosecution so the judicial confessional statement was voluntary and was made without any duress, coercion or pressure. Furthermore, such a confession does not lose its evidentiary value even if the same is retracted if it gets independent corroboration from direct and indirect evidence (1992 SCMR 754). Based on the above, the High Court upheld the sentence of death.

Rule

Confessions do not lose their evidentiary value even if retracted if they are corroborated by direct and indirect evidence. Circumstantial evidence can be used to corroborate a retracted confession and retain its evidentiary value.

Failure to Produce Relevant Circumstantial Evidence and Production of Material Witnesses Another omission which precludes the effective utilization of circumstantial evidence is a failure by Prosecutors to produce and examine the case property as wel as production of material witnesses. These omissions were on glaring display in *State vs. Abdul Bari*, 2016 PCr.LJ 522 Balochistan High Court where negligence of the Special Prosecutor led to acquittal of the accused.

The State vs. Abdul Bari, 2016 PCr.LJ 522 Balochistan High Court

Background

The accused were arrested and after recovery of unlicensed weapons from their possession, recovery memos were attested by prosecution witnesses, who were cited as prosecution witnesses in chal an. Due to the negligence of the special prosecutor, neither those material witnesses were examined nor was the case property produced.

Defects in Trial and Prosecution

While setting aside the conviction of the trial Court, the High Court noted the fol owing irregularities: a. The trial Court had not verified whether prosecution had exhausted its material witnesses along with the case property.

b. The prosecution side was closed without examining the record of the case, without assigning any reason, without examining and producing the case property i.e. unlicensed weapons recovered from the possession of the private respondents.

Main Findings of the Court

The High Court observed that the trial Court, while passing judgement, had completely ignored the principal objective under which S.540 Cr.P.C was brought into the statute. The provisions of Section 540 Cr.P.C cast a legal duty upon the Court/judge to see that the witnesses, who have been cited by the prosecution are produced by it, or if summons are issued, they are actual y served on the witnesses.

If the trial Court is of the opinion that material witnesses have not been examined, it should not al ow the prosecution to close the evidence.

There can be no doubt that the prosecution may not examine al its witnesses, but that does not necessarily mean that the prosecution can choose not to examine any witness. The Public or Special Prosecutor, who conducts the trial, has a statutory duty to perform.

The Court relied on the case, *Muhammad Azhar vs. Muhammad Iqbal and others*, PLD 1984 SC 95 in which the Supreme Court noted, “It needs to be

observed that for the purpose of acting under Section 540 Cr.P.C, it is permissible to look into the material not formal y admitted into evidence, whether it is available in the records of the judicial file or in the police file or elsewhere.

Key Lessons

•

The witnesses who were cited as prosecution witnesses in the chal an were not examined by the prosecution.

•

The unlicensed weapons that were recovered were also not produced in evidence.

•

The provisions of Section 540 Cr.P.C cast a legal duty upon the Court/judge to see that the witnesses, who have been cited by the prosecution are produced by it, or if summons are issued, they are actual y served on the witnesses.

•

It is permissible under Section 540 Cr.P.C to look into the material not formal y admitted into evidence, whether it is available in the records of the judicial file or in the police file or elsewhere.

Mst. Mir Zalai vs. Ghazi Khan 2020 SCMR 319

Background

This case is about a homicide of a man. The accused was acquitted because of lack of evidence and the questions raised about the eye witness testimonies.

Evidence:

•

Chance witnesses’ testimonies which were questioned by the court because they claimed to have seen the act at night in the dark, however, no evidence was produced regarding any source of light at the crime scene.

•

Alleged blood-stained clothes of the eye witnesses while handling the deceased but no such clothes were submitted to the court.

Main findings of court

The court upheld the acquittal based on unreliable eye witnesses and the fact that no concrete circumstantial evidence was submitted by the prosecution.

Key Lessons

•

If the incident takes place in the dark, the prosecution is expected to present evidence of a source of light which al owed the eye witness to identify the accused.

•

If the eye witness is chance witness, they must present a reasonable explanation for their presence at the place where the incident took place.

•

If there is a claim of the presence of any evidence, it must be submitted to the court.

Jalat Khan vs. The State 2020 P Cr. L J 503

Background

This case is about a homicide of a man by the accused who opened fire at them while they were working in a field.

The accused denied the accusations and demanded trial. He neither opted to appear as his own witness nor produced any other witnesses. The witnesses produced by the prosecution were al related to the deceased and any other potential witness was not produced, although named in the statements.

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Evidence

•

Ocular account of three witnesses, al of them closely related to the deceased.

•

Medical reports of the deceased

•

The rifle used to shoot the accused. However, the reports were doubtful because the weapon had been submitted to the forensics team 8 months after the incident.

Main findings by the court

The court ruled that the prosecution had failed to produce any trustworthy and reliable evidence to prove the culpability of the accused. Their witness statements were majorly compromised because of their close relation to the deceased, the fact that no other, unrelated party observed the event, that the complainant was not present at the scene and that those who were, did not take the deceased to the hospital and also avoided getting any injuries. These reasons, paired with lack of production of any other witness, compel ed the court to acquit the accused.

Key Lessons

•

If the witnesses are closely related to the deceased and if there is no corroborating evidence supporting their testimonies, then the ocular accounts may be taken into consideration with extra precaution and scrutiny.

•

The statements of eye witnesses may be recorded immediately. If there is a delay and there is no plausible explanation for it, the statements can be questioned.

•

The prosecution must produce witnesses that are unrelated and uninterested in the matter and with the parties, especial y if the testimonies of the present witnesses are compromised.

•

The evidence col ected, such as the murder weapon, must be sent to the forensic experts immediately and any delay in the process must be explained using plausible reasoning.

Inconsistencies in Statements of *Mashirnama* Witness and Statement of I.O.

It is crucial that there is no inconsistency between the statements of *mashirnama* witnesses and statements of the investigation officer. The *mashirnama* witness is a crucial witness and if there is any inconsistency in their statements, it wil cast doubt on the authenticity/recovery of circumstantial evidence and can result in an acquittal.

Akbar Ali Shah vs. The State, 2014 YLR 782 SHC

Background

The accused persons were arrested for committing murder and al eged recoveries of incriminating material were made on their pointation. However, there were inconsistencies in the statements of the *mashirnama* witnesses and the investigation officer which cast doubt on the case of the prosecution and the genuine recovery of circumstantial evidence.

Defects in Prosecution

While setting aside the conviction of the accused, the Karachi High Court noted the fol owing flaws in the case of the prosecution:

a. It was quite surprising that the I.O. did not consider it necessary to have the recovered belongings of the deceased put into identification.

b. The concealment of a motorcycle by digging earth in the room is also improbable and against logic. It would have been rather easy for the accused persons to have disposed of the motorcycle as was done with the dead body.

c. It was not mentioned in the *mashirnama* that the motorcycle was found rusted.

d. P.W. Allah Julio, Investigation Officer, stated about the recovery that "on the pointation of accused Akbar Shah earth of ground of the room was dug out one motorcycle, one golden ring, golden chain, chappal of deceased, one

spade" while the *Mashir* Nisar Ahmed stated that "motorcycle produced by the accused Akbar Shah from inside the house room along with key, registration book (PS copy), one Spade, one bicycle, one golden ring, one golden locket of the deceased in presence of S.D.M Moro were recovered and such *mashirnama* was prepared by the police and had put my signature".

Main Findings of the Court

The inconsistency between the statements of the *mashirnama* witness and the investigation officer in the recovery of incriminating materials meant that the circumstances of recovery could not be relied upon in the instant case, resulting in acquittal of the accused. The Court also placed reliance on the judgment of the honorable Supreme Court in the case of *Muhammad v. State* where it was held that material contradictions between the statements of the recovery officer and the marginal witness wil invalidate the relevant circumstantial evidence in a case.

Ayaz Khan vs. The State 2005 YLR 1297

Background

This case is about the homicide of a man who al egedly broke and entered into the house of the accused and tried to abduct her on gunpoint. The co accused came to her rescue and al egedly murdered the deceased.

Evidence

•

The pistol used to murder the deceased

•

The empty shel s of the bullets

•

The positive report of the forensics team, proving the empties were from the same pistol

•

The motive for murder disclosed by the daughter of the widow

•

Inconsistent statements made in the FIR and the accused about who fired the pistol at the deceased.

•

Fake ID recovered from the deceased.

Main Findings by the Court

The court ruled that the case is based on weak circumstantial evidence and that the inconsistencies between the statements of the accused and the FIR weaken the prosecution’s case. However, the court asserted that such inconsistencies cannot be attributed to the accused because no rule of law permits capital charge punishments based solely on such inconsistencies.

Key Lessons

In case of capital charge, it is necessary to remove every possibility of false implication beyond any shadow of doubt.

•

Inconsistencies in statements and FIR can be overlooked, provided they are not the ones lodging the FIR, nor are they an attested witness.

•

The circumstantial evidence must not miss any links, starting from the crime committed to the accused.

•

The circumstantial evidence must be scrutinized heavily, especial y in cases of capital charges.

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V. FORENSIC EVIDENCE

a. Forensic Evidence as part of Circumstantial Evidence

Forensic evidence can be classified under the category of circumstantial evidence. Circumstantial evidence is indirect evidence. It is like a chain, connecting the accused with the commission of the offence and if a single link of that offense is missing, it shatters the case of the prosecution. 208

Locard’s Principle

The Locard’s principle al ows one to get further clarity on Forensic Evidence. This principle is based on the idea that a perpetrator wil leave marks or traces on the crime scene or carry traces from the crime scene. It operates on a principle of exchange that every contact leaves a trace.

For example, the perpetrator, who is not careful during the commitment of the crime wil come into contact with some surface, and thus, would leave traces of blood. The col ection of the hair by the investigating officer may result in connecting the accused with the crime. This blood is one example of the many forms trace/forensic evidence can take.

Forensic evidence is the kind of evidence that arises out of:

- The contact of a person with another
- The contact of a person with a surface or material
- The contact of two surfaces or materials

b. Functionality of Forensic Science

The functionality of forensic science in criminal investigations, especial y counter-terrorism cases can be understood by referring to three questions.

UNDERSTANDING THE FUNCTIONALITY OF FORENSIC SCIENCE IN CRIMINAL INVESTIGATIONS

Whether a crime has been committed?

Significance: Forensic science can be used to ascertain the existence of facts and circumstances constituting the crime (also known as *corpus deliciti*).

How and when the crime was committed?

Significance: This is established by examining the facts and circumstances of the crime in order to reveal the way the crime was committed and the possibility of the time that it was committed.

Who committed the crime?

Significance: Forensic science established the identity of the culprit through different mechanisms such as fingerprint analysis or DNA analysis. It, therefore, connects the criminal to the crime through traces left at the crime scene or taken from the crime scene.

208 Dawn, 'The Missing Link in Terrorism Cases' (2011) <https://www.dawn.com/news/613003/the-missing-link-interrorism-cases> accessed 14

December 2017.

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c. Legal Framework of Forensic Evidence in Pakistan and its Relevance

Introduction

This chapter expands upon the legal framework of Forensic Evidence in Pakistan i.e. the different legal provisions pertaining to forensic evidence, the different types of forensic evidence and their relevance/admissibility in court, and the procedure to be fol owed in order to col ect admissible forensic evidence. While highlighting other relevant legal provisions, this section focuses on the Qanun-e-Shahadat Order, 1984 that primarily governs

the laws related to evidence in court proceedings. The other statutes mentioned include the Anti-Terrorism Act, 1997, the Code of Criminal Procedure, 1898 and the Investigation for Fair Trial Act, which outlines provisions related to covert investigative measures used by Intelligence Agencies.

Qanoon-e-Shahadat Order 1984

Article 164 of Qanun-e-Shahadat Order, 1984

In such cases, as the Court may consider appropriate, the Court may al ow to be produced any evidence that may have become available because of modern devices or techniques.

Case Study *Saifal vs State*[209]

The three accused in this case were charged for the commission of Dacoity. The charge was made based on reliable witness testimonies and evidence admissible under Art. 164 of Qanun-e-Shahadat, i.e. Record of Mobile Company and evidence of its representative. Under this article, the production of evidence produced through modern devices and techniques is admissible in court.

Among the looted items taken by the accused, were mobile phones. During investigation, the IMEI number of the looted mobile phones was used to connect it to their Sim record which was taken from the company, Mobilink. The record provided by this company showed that 2 of the 3 Sims being used in the looted mobile phones were registered under the name of one of the accused. The Co-Coordinator of Mobilink Company was also examined by the prosecution, and he supported the case of the prosecution by providing evidence of the phone looted from the complainant's house being used with a Sim registered under the accused’s name.

This evidence of Mobile Company Records, produced under Art. 164 of Qanun-e-Shahadat, was considered a strong piece of evidence against the accused. Thus, along with witness testimonies, it resulted in the conviction of two of the three accused. The third accused/appel ant’s charge could not

be established by the prosecution through evidence, due to which his appeal was allowed.

Case Study: *Hasham Jamal vs The State*[210]

The petitioner was accused of assaulting the victim and charged with abducting the person in order to subject the person to unnatural lust. The prosecution's case was primarily based on forensic evidence of a cel phone found in possession of the accused during investigation. Upon forensic analysis of the cel phone's memory card, stil s containing graphic details of the accused's assault towards the victim was retrieved. The forensic report of the cel phone also correlates the time the stil s were taken with the victim's narrative of when the assault occurred. The 209 *Saifal vs State*, 2013 PCrLJ 1082 Karachi High Court Sindh

210 *Hasham Jamal vs The State*, 2018 PCrLJ 105 Lahore High Court

judgment held that this forensic evidence was sufficient ground to prove the petitioner's culpability in the absence of medical evidence.

The judgment held that, *"Criminal justice has entered a new era of forensic evidence; Articles 46-A ad 164 of Qanun-e-Shahadat Order, 1984 take cognizance of this change; statement of the victim; supported by above material; prima facie, sustain the charge."*

Article 59 of the QSO

When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of hand-writing or finger impressions [or as to authenticity and integrity of electronic documents made by or through an information system] the opinion upon that point of persons special y skil ed in such foreign law, science or art, or in questions as to identity of hand writing or finger impressions [or as to the functioning, specifications, programming and operations of information systems], are relevant facts. Such persons are cal ed experts.

After receiving summons, the expert witness has to appear before the Court where the evidence is probed for uncertainty, inconsistency etc. in the fol owing order:

i.

Oath

i . Examination-in-chief

i i. Cross-examination

iv. Re-examination

v. Court Questions

For the purposes of giving an opinion under Article 59, the witness first has to establish expertise in the field through academic qualification or experience. Without such validation, an opinion cannot be taken as having evidentiary value for proving a fact in issue. 211 There is no conclusive rule that lays down when a person becomes an expert. As a general rule, it is the discretion of the Court to determine whether the qualifications of a witness are such that would qualify them to be considered experts. During Court proceedings, ample opportunities are given to inquire into the background of a witness in order to examine whether or not they qualify as an expert.

Before expert evidence can be admitted, two things must be proved:212

i.

The subject is such that expert testimony is necessary

i . That the witness in question is real y an expert

Section 510 Code of Criminal Procedure, 1898

Any report purporting to be a report, under the hand of any Chemical Examiner or Assistance Chemical Examiner to Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any

Serologist, finger print expert or fire arm expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may without cal ing him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code: Provided that the Court may [if it considers necessary in the interest of justice] summon and examine the person by whom such report has been made.

211 *Land Acquisition Col ector Sargodha vs. Muhammad Sultan*, PLD 2014 SC 696

212 *Jarat Kumari Dassi vs. Bissessur Dutt*, ILR 39 Cal 245

It has been held that Section 510 is an exception to the general rule laid down that al evidence has to be taken in the presence of the accused. It is a departure from the elementary rule of law that unless evidence is given on oath and is tested by cross-examination it is not legal y admissible against the party affected. It makes the report of an expert, mentioned in the section, admissible in evidence without cal ing them as a witness. The rationale for this is to avoid expense, delay and inconvenience entailed if the expert is made to produce evidence at every trial of a criminal case. 213

As per the Court, the requirements under the section are that:

i.

Original report shal be put in evidence;

i . Report must be formal y tendered;

i i. Report must be ‘under the hand’ of the expert;

iv. If the report alone is to be considered sufficient, it should contain al the information which the officer himself/herself would have been able to furnish if he had been examined as a witness.

It was further held that where the report is incomplete or cryptic, it is preferred that the expert provide reasons for the opinion expressed. Setting out reasons wil help to clarify and furnish a valuable guide to the parties and Court in testing the value attached to the opinion.

The Court has the power to summon and examine an officer whose report has been used as evidence upon application of the prosecution or the accused. Where such an application is not made, the inference is that the right and opportunity of cross-examination was provided, and it did not suffer from any infirmity or blemish.

Section 27B of the Anti-Terrorism Act, 1997

In 2014 amendments were made to the ATA, where a person can be convicted solely on the basis of electronic and forensic evidence provided that the Court is satisfied as to the genuineness of such evidence.

Notwithstanding anything contained in this Act or Qanun-e-Shahadat, 1984, or any other law for the time being in force, a person accused of an offence under this Act may be convicted on the basis of electronic or forensic evidence or such other evidence that may become available because of modern devices or techniques referred to in Article 164 of the Qanun-e-Shahadat, 1984. Provided that the Court is fully satisfied as to the genuineness of such evidence.

Forensic and electronic evidence can ensure that a Judge is able to decide a case sans emotions, based solely on the availability of scientific findings. The Karachi High Court has relied on international jurisprudence to further validate their argument regarding the admissibility of electronic documents and evidence. The judgment of the Indian Supreme Court was quoted where in it was held that ‘tape records of speeches were “documents”… and they were admissible in evidence on satisfying the fol owing conditions… (a) the voice of the person al eged to be speaking must be duly identified by the maker of the record or by others who know it (b) the accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record and (c) the subject matter

recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.'214

213 *Sultan vs. The State*, 1987 SCMR 1177

214 *Ziyauddin Burhanuddin Bukhari vs. Brijmohan Ramdass Mehra and others*, AIR 1975 Supreme Court 1788, reliance on *R. Maqsud Ali* (1945) 2

Al ER 464.

The Court quoted another Indian Supreme Court case215 wherein it was held that a tape-recorded conversation is admissible provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. In view of these judgments, it was held by the Court that the accused has an inalienable and incontrovertible right to get copies of the CD and USB for his defence by application of Article 27B ATA and Article 164, QES.

d. Process of Forensic Investigation

The process of Forensic Investigation includes four major steps.

1. Identification: This includes defining the physicochemical nature of the evidence obtained 2. Classification: This includes identifying the different sources for the evidence obtained.

3. Association: This includes inferring the contact between two objects, the source of evidence and the target on which it was found.

4. Reconstruction: The understanding of events based on the evidence discovered and analysed.

This segment below al ows the participants to understand the process of identification and classification by shedding light upon the various types of forensic evidence. This section is fol owed by how investigators are able to reconstruct the crime scene based on the evidence col ected.

e. Different Types of Forensic Evidence

Forensics science is one that borrows from al its neighboring sciences; from the complex techniques of identifying gunshot residue to the detailed analysis of comparing DNA samples. Its application has been a primary source of evidence that the prosecutors have relied upon in a majority of recent terrorism cases. However, with such a wide scope of relevant evidence available at each crime scene, there are many important steps and precautions involved in the col ection and handling of each type of forensic evidence.

Forensic Evidence such as blood, DNA, fingerprints, gunshot residue, bal istics and so on, have a unique set of handling and col ection requirements that need to be adhered to. Any negligence in that process is bound to compromise the evidentiary value of the objects col ected and may, in turn, not be admissible. Equal y important is the need to use the col ected evidence in reconstructing the crime scene in order to establish what might have actual y happened. In this section, after identifying the characteristics of different types of forensic evidence, we take a look at the techniques used to col ect and transport them, and similarly see how such evidence is crucial in reconstruction of a crime scene.

Table Classifying Forensic Evidence.

TRACE EVIDENCE

BIOLOGICAL

FORENSIC EVIDENCE OBTAINED

FROM MODERN DEVICES

215 *R.M.Malkani vs. State of Mahrashtra*, AIR 1973 Supreme Court 157

136

Fibre

Hair Fibres

Electronic Records

Glass

DNA/ Bodily Fluids, Blood Stain

Forensic Accounting

Gun Shot Residue

Finger Prints

IFTA

Explosive Residue/ IED Forensic Pathology

Forensic Photography

Material

Soil/ Plants

Paint

Physical Evidence

Biological Forms of Forensic Evidence

DNA, Hair and Fingerprints

DNA is found in almost every cel in the human body. Skin, hair fol icles, sweat, urine, semen, saliva and blood are common sources of crime-scene DNA. Items where DNA may be found include but are not limited to clothing, eye glasses, hair brushes, cigarette butts, cups and bottles, stamps or bite wounds. Hair does not contain cel s but their hair fol icles do. 216 These forms of evidence, unlike those described above, are biological forms of forensic evidence and their evidentiary value greatly differs from physical forensic evidence. Since hair, DNA and fingerprints are al unique to a particular person, it becomes possible for experts to determine that a

particular person was present at the scene if some form of their DNA is discovered there. DNA evidence, found in the form of bodily fluids, skin etc.

in individualizing evidence, often helps in connecting a particular individual with a crime.

DNA and fingerprint evidence found around a crime scene can help establish, in addition to the presence of individuals, the nature and even the sequence of events. Fingerprints found on the glass fragments of a broken window may point to the fact that the perpetrator broke and entered through the window. Furthermore, fingerprints recovered from the crime scene can be compared with those of a suspect or accused.

Investigators frequently find hair both human and animal at crime scenes and the forensic expert must determine whether the hair came from a family dog, victim or the perpetrator. Although the shaft of the hair cannot alone be matched to an individual, it has several properties that make it useful in tracing criminals. “It’s smal , easily shed, clings to clothing and other materials and goes unnoticed by perpetrators at crime scenes. Moreover, hair is handy and survives for a long period of time, even years after the bodies decompose.” 217 If the hair fol icle is attached to the hair, it can be used by the examiners to extract the DNA and may be examined by experts to determine:

● If the hair comes from a human or animal

● What part of the body the hair originated from?

● What is the race of the individual to whom the hair belongs?

● Whether there are any chemicals, toxins or dyes in the sample

Hair discovered at a scene can also establish the nature of contact at times and may be used to determine how the hair broke off: natural y, forcibly or whether it was cut. So if there was a violent struggle before murder and the perpetrator yanked on the hair of the victim, the way the hair broke may be determined by experts. This in turn helps in recreating certain element of a crime.

Role of Fingerprints in Criminal Investigation

216 supra note 85, p239

217 supra note 85,278

137

The use of fingerprints in the identification of criminals is the most frequently applied technique in forensic science.

Fingerprints offer a powerful means of personal identification and stil remain the most commonly used forensic evidence worldwide. No two individuals possess the same fingerprints. Because of this, fingerprints are an excel ent means of identification. Moreover, while other visible human characteristics change – fingerprints do not change.

Finding a useable fingerprint can determine:

● Whether a particular person was present at the crime scene

● Whether a particular person touched a weapon

● Whether a person touched the victim

With regards to the science of finger prints, the courts have also recognized that *: "the science of identification of finger-prints is a definite [science] and it is universally recognized that ridges on fingers of one person do no tally with ridges on fingers of any other person in the world."* *218* However, there are certain protocols that need to be satisfied to ensure the optimum legal utility of fingerprints evidence because such evidence may not provide a dependable foundation for conviction or acquittal. In light of this, the court opined that: "*Opinion of Finger Prints Expert may point to the complicity of [accused] in the crime but when there is no other independent and above board evidence showing as to where did these finger prints come from, in whose presence they were taken and whether the official taking them could take them in the absence of the concerned person whose PPO was prepared or whether such official could accept the Finger … When no answer much-less satisfactory comes forth, evidence of finger prints alone cannot provide*

a dependable foundation for recording or maintaining the convictions of the appellants, especially when evidence of this type can be fabricated by the Investigating Agency at subsequent stage. When this is the quality and quantity of evidence, it would not be in accord with safe administration of justice to maintain the conviction sentences of the appellants." [219]

Types of Fingerprints

There are three types of the fingerprints:

1. Patent Fingerprints[220]

The Patent Fingerprints are visible prints that occur when a foreign substance on the skin of a finger comes in contact with the smooth surface of another object. These prints leave a distinct ridge impression that is visible with the naked eye without technological enhancement of any kind. The tried and true "blood on his hand"

evidence is an example of patent prints recovered from a crime scene. These foreign substances contain dust particles which adhere to the ridges of the fingers and are easily identifiable when left on an object.

2. Latent Fingerprints[221]

The Latent Fingerprint impressions are secreted in a surface or an object and are usual y invisible to the naked eye. These prints are due to perspiration caused by sweat pores found in the ridges of fingers. When fingers touch other body parts, moisture, oil and grease adhere to the ridges so that when the fingers touch an object, such as a lamp, a film of these substances may be transferred to that object. The impression left on the object leaves a distinct outline of the ridges of that finger. These fingerprints must be enhanced upon col ection and, because they serve as a means of identifying the source of the print, they have proven to be extremely valuable over the years in the identification of its source.

218 1990 PCr.LJ 1057, [19]

219 2012 PCr.LJ 24, [12].

220 http://www.fingerprinting.com/types-of-fingerprints.php

221 http://www.fingerprinting.com/types-of-fingerprints.php

3. Plastic Fingerprints[222]

Plastic Fingerprints are visible, impressed prints that occur when a finger touches a soft, mal eable surface resulting in an indentation. Some surfaces that may contain this type of fingerprint are those that are freshly painted or coated, or those that contain wax, gum, blood or any other substance that wil soften when hand held and then retain the finger ridge impressions. These prints require no enhancement in order to be viewed, because they are impressed onto an object and are easily observable.

Blood and Bloodstain patterns

Blood

Evidence of this sort is the most likely found at a crime scene. Blood, like hair, cannot determine its exact source, but can be used to extract useful information to exclude groups of individuals. Pools of blood found at a scene may indicate that there are two different blood types. The blood group that is different from the victim’s wil be assumed to belong to the perpetrator or someone else who was directly involved with the crime. Once the blood group is determined, the investigation may exclude individuals with other blood types.

Bloodstains are of immense utility in the investigation of terrorism and other criminal cases. They can be used as a source of DNA evidence and the nature of the encounter can be ascertained via the bloodstain pattern.

How can Bloodstains be used?

In violent incidents such as bombings, there is mass devastation, leading to a considerable amount of bloodshed.

The bloodstains from such incidents can be utilized in several ways and the most important ways are mentioned below as fol ows:

● Bloodstains are a source of DNA evidence

● Blood Pattern Analysis

Bloodstains and their utility is vast. They can be used as a source of DNA evidence and the bloodstain pattern can be observed to recreate events and understand the nature of a violent encounter.

Analysis

As elaborated in the previous chapter, DNA evidence is crucial in terrorist investigations and can be extracted from various sources. One such source of DNA is a bloodstain. and samples of bloodstain can then be used to determine the source of the blood. However, it is important to note that the blood should be analyzed while it is dry on surfaces including weapons, bodies, clothes etc.

Bloodstain Pattern Analysis (BPA):

Patterns of bloodstains can be used in their entirety to establish the nature of the crime including other elements that can be crucial to an investigation. For example, in a target kil ing, the blood patterns surrounding the area of the victim could indicate the angle at which the bul et hit the target. This could in turn establish the vantage point of the shooter. This location could then possibly be used to trace down the perpetrator of the crime. Facts that can be determined from the BPA are:

● The origin of the bloodstain

● The type of weapon used in the violence and hence the cause of the death

● The direction from which an object struck the victim

222 http://www.fingerprinting.com/types-of-fingerprints.php

● The relative positions of the victim, assailant and bystanders

● The locations and movements of the victim and assailant during the attack

● The number of blows or gunshots the victim received

● The truthfulness of any suspects and witnesses223

Source of evidence:

● Stains on clothes and articles

● Stains on large surfaces (furniture etc.)

● Photographs of fixed surfaces (wal s etc.)

Forensic Pathology

This branch of Pathology determines the "cause of death, time since death and the manner of death by a detailed examination of a case body. The Medical Legal Officer (MLO)is responsible for performing the autopsy and the specimens are then sent for analysis." 224

The examination leads to the following information about the cause of death:

i.

The evidence of the disease

i . The Assessment of drugs and alcohol in the body

i i. The Physical exertion

iv. Trauma

v. Psychological stress causing fatal outcome.'225

The Medico Legal Evidence includes the fol owing:

i.

Post Mortem Report by the MLO under the CrPC, Section 174[226]

i . Report by the Medical Board under the CrPC, Section 176[227]

i i. The Medico Legal Certificate[228]

The common type of injuries that may be afflicted on the victim include, abrasions, bruises, lacerations, incised wounds, stab wounds and firearm wounds.

f. Physical Forms of Forensic Evidence/ Trace Evidence

i.

Fiber

A fiber is the smal est unit of a textile material that has a length many times greater than its diameter'. [229] In crime scenes, fibres are often found that belong to an article of clothing worn by either the victim or the perpetrator. Carpet 223 Forensics of Dummies, Doughlas Layel

224 Forensic Investigation Handbook by Sindh Police, Sharjil Kharal, 2015 p27

225 ibid

226 The MLO determines the cause of death and the autopsy report contains an opinion about the mechanism of death, the manner of death, the time since death and the identity of the deceased. Forensic Investigation Handbook by Sindh Police, Sharjil Kharal, 2015 p33

227 In high profile cases a medical board is formed under this section which includes a MLO, a Police Surgeon and a Forensic Expert. The team performs an autopsy and concludes the Post Mortem Report., ibid

228 This is written by the MLO after examining cases of rape, assault, gun shots and police torture. The MLO assesses the degree of impairment caused under the Qisas and Diyat law. Supra note, 240

229 Federal Bureau of Investigation, Archives, Laboratory Services. https://archives.fbi.gov/archives/about-us/lab/forensic-science-

communications/fsc/july2000/deedric3.htm

fibres or fibres from bed-sheets and furniture are also often discovered from the crime scene. These left over fibres al ow a link to be established between the fibres and the object they belong to and that further facilitates the investigation team in analyzing the crime scene. For example, if a victim is found with a few smal red threads on her green sweater, this is an indication that the red threads are foreign material and may have been transferred from some other fibre or person she may have had contact with. The fibre may then be analysed by experts who may match it to a sweater or a piece of clothing owned by the perpetrator of the attack. The accused's house may then be searched to connect the red fibre to a piece of clothing owned by the accused.

Furthermore, fibre transfers can be of 2 types; direct and indirect. The transfer of the red fibres on to the green sweater is an example of a direct transfer. However, if the red fibres were transferred onto the perpetrator's clothes from another person's clothes via contact and then were transferred onto the victim, then this would be an indirect transfer. Thus, in the case of an indirect transfer, it may be difficult for the investigation team to connect the crime to the criminal.

The time period for which transferred fibres may last, varies. 'The likelihood of transfer depends on the types of fabric involved in the contact and the nature and duration of the contact. Studies have shown that transferred fibers are lost rather quickly, depending on the types of fabrics involved and on the movement of the individual after contact. For example, the clothing of a homicide victim would tend to retain transferred fibers for a longer period of time because the victim is not moving'. 230

Attack on PM Shaukat Aziz

In 2004, the then Prime Minister Shaukat Aziz's Motorcade was attacked by a suicide bomber in Fateh Jang. The target of the bomb, the PM, survived whilst 8 others including his chauffer were kil ed. The investigation that ensued revealed several crucial pieces of trace evidence that led to the culprits being identified. The evidence that was discovered included a sticker on the shirt of the bomber and bloodied pieces of his body and face (which remained intact). The sticker was traced back to a shop that belonged to a local tailor, which the DOP said was a major clue.

Remnants of the bomber himself were submitted for chemical examination and it was suggested by officials that the bomber would be identifiable from his face.

Self-Assessment Question

-

What trace evidence was used in the attack on PM Shaukat Aziz to trace the perpetrator?

i . Gunshot residue (gsr) and explosives

GSR are the particles that are released from a gun/firearm when it is fired. The residue may be transferred to the person firing or anyone in proximity and so along with surfaces and objects, a suspect's hands must also be sampled for traces of residue. Though residue is not unique like DNA, and cannot identify a particular gun/firearm or person, residue found at the scene can be used to ascertain that a firearm was used. Similarly, by testing a person's hands, it is possible to discover residue and determine that the suspect had some contact with a firearm recently. This may, with the support of other evidence, be used to prove some link that the suspect had to do the shooting in question.

Explosive Devices, when used, also leave behind debris and chemicals, like GSR.

230 Federal Bureau of Investigation, Archives, Laboratory Services: https://archives.fbi.gov/archives/about-us/lab/forensic-science-

communications/fsc/july2000/deedric3.htm

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Explosives and residue from explosions can be very valuable trace evidence and require expert handling. Since explosives are the most popular form of violence chosen by terrorists in Pakistan (suicide bombing etc.), it is likely that a terrorist incident wil cal for some expertise on handling live explosives or residue. It is also interesting that a lot can be determined from the kind of explosive that is found or the kind of residue it leaves behind. It is commonplace that terrorist groups tend to have a preference for a particular kind of explosive. Identifying the type of explosive used, could very wel lead to establishing the terrorist or terrorist organization involved. This, however, can only be deduced by experts in the Bomb Disposal Unit, who are in charge of the analysis of both live explosives and residue. In fact, the honourable justice, in *Sate v. Sarfaraz Khan*, made it clear that a witness testimony of an expert of the BDU is integral to determine the nature of the explosive material used by the terrorist, otherwise, the explosive material evidence (held in the report) would be inadmissible in court.

Various type of Guns can cause various types of wounds. For a proper review of them, the officer should investigate on the fol owing grounds:

a. Whether wounds are self-inflicted or caused by another?

b. Was this a case of accidental shot?

c. Is there any evidence that can support or prosecute any claims about the case of shot?

Other considerations that concern the investigation of Gun Shot wounds, apart from residue are: i.

Number of shots

i . Wound location

i i. Distance between weapon and entrance and victim

iv. Angle of gun shout wound

i i. Glass

Shards of glass may contain a plethora of evidence. Firstly, if there is broken glass (window etc.) at a crime scene, it is likely that either the victim or the perpetrator came in contact with it. Thus the glass could hold traces of blood and even fingerprints. However, glass, as trace evidence, also has its own unique evidentiary value.

Glass evidence is significant in crimes such as hit and runs (vehicular manslaughter), burglaries and even murders.

'When a pane of glass is broken, minute glass fragments can be showered onto the hair, clothing and footwear of people in close proximity – at least 1.5 and possibly up to 3 metres away'. 231 For example, if a burglar breaks into a house through the window, it is likely that fragments of the glass wil get transferred onto him. He wil then unknowingly carry these fragments around, with him, in his hair or clothes, his getaway vehicle and even to his house after the burglary. During the investigation, the officers may col ect samples of the broken window at the crime scene. Later when a suspect is identified, and his house, car and clothes are searched, glass fragments may be discovered. Experts may then analyze and compare both samples, and if they match, this can be used as strong evidence against the suspect. Of course, it is important to keep in mind that analysing glass and something like DNA, is very different. DNA can point to a particular person, whilst glass can only suggest that the type of glass found at the scene and later at the suspects house, is of the same type because they share similar characteristics; thickness, colour etc. Additionally, the way glass shatters or breaks can also be indicative of how it was broken or where the 231 Forensic Access, Glass: https://www.forensic-access.co.uk/glass-trace-evidence-forensic/

impact originated from. These details are important in recreating the events of a crime, which in turn may help to solve it. 232

CASE STUDY – GLASS

In Australia, a widely known hit and run case involved the use of glass evidence as part of the investigation process.

Pauline and Anthony Freeman were walking home when they were hit by a truck driven by 29-year-old Louis Marcus.

Pauline died from her injuries while Anthony suffered severe neck injuries. As the driver did not stop after the couple had been hit, an investigation ensued in which the police col ected valuable trace evidence including shards of glass that were found on both the victims' clothes. Later when the driver handed himself over to the police it was found that the glass from the victims' clothes matched the glass from the driver's truck and was also found in a bin in his house.

Self Assessment Question

-

How was glass used to identify the driver who hit the victims?

iv. Soil and plants

Evidence, may sometimes be traced from soil at the crime scene, the perpetrator's shoes, clothing, tires or even tools like shovels. "Soil is not simply dirt and is a mixture of minerals, plant, animal matter and minerals. Sometimes, man-made products such as glass, paint, asphalt, concrete and other materials may also form part of the soil composition". 233 However, the composition of soil varies depending on where it originated from. By examining the soil sample and its contents, experts can determine whether it came from a beach or a backyard or somewhere else entirely. The most effective way to understand how soil can be used as evidence is by considering the example mentioned below:

A perpetrator enters his victim's house through the garden (soil) and leaves traces of soil at the crime scene. Upon analysing samples of the soil col ected by the Investigating officer, experts deduce that the contents contain horse hair and manure. This indicates to the experts that the horse hair and

manure may have transferred from the ground of a farm to the accused's shoes and mixed with the soil at the victim's house. Even though this does not direct the investigating agency to a particular farm or suspect, it does significantly narrow down the search of the accused. Local farms nearby could be investigated and persons having recently visited them could consequently be questioned.

v. Plants and seeds

Plant materials may also have valuable forensic significance. They are found in soil samples, on corpses, flooring etc.

Similarly, if the remnants of a certain type of plant was found in the soil, instead of horse hair and manure, it would indicate that the person who walked through the garden had recently also walked through a field or location to which that plant is native. Plant materials can link a suspect to a crime or a crime scene and investigators may often search for pine needles, stems, flower petals, seeds and pol en because different plants belong to different areas and materials col ected and examined on those plans can help determine the origin of the soil sample. For example, "if the investigators find pine needles on the floor near a homicide victim but no pine trees grow near the residence, 232 The resource: Cracks in windows and other flat plates of glass tend to be radial and concentric. Radial cracks spread outward from the point of impact in a spoke-like configuration. Concentric cracks are a series of progressively larger circles around the point of impact. Overall, a cracked window may look like a spider web. If a projectile, such as a bul et, strikes a window and penetrates it but doesn't completely shatter it, the impact may leave a hole with or without surrounding fracture lines.

233 *Forensics for Dummies*, Douglas Layel, 2016, 2nd Edition, p291

the kil er probably brought needles with him on his clothing or shoes. Determining the particular species of the pine-tree the needles came from helps narrow the search area"

vi. Paint

Paint is a manufactured liquid that dries to form a thin, hard coating. This type of evidence is not limited to just paint on wal s, but it includes the paint on vehicles and other objects and even nail polish. Often times during violent physical crimes like murders and hit and runs, sometimes the paint from wal s, nails and cars gets transferred onto the victim or assailant or some weapon or object connected with them. For example, in a hit and run, where the victim is hit and run over by a red car, it is likely that some of the paint from the car becomes transferred on to the victim. The red paint wil then be analysed by experts who wil determine that it is indeed from the car that hit the victim. This, again, wil help to narrow down the search for vehicles, though not pinpointing one in particular; the make, model and even the year of the vehicle can be identified by experts. The more violent the encounter, the more likely it is that paint evidence wil be transferred, whether from a car onto another car or victim or from a wal onto a victim or perpetrator. An analysis of paint from these transfers can be critical to placing a suspect at the crime scene.

Forensic Evidence Obtained Through Modern Investigation Techniques

i. Digital forensics

Mobile

With the advent of the era of technology, criminals are widely using the latest technological innovations for committing crimes and hence more modern investigation techniques are required to counter these crimes. For example, in the investigation of cybercrimes and white-col ar crimes, the traditional methods of col ecting information as statements of witnesses, confessions of suspects, information from informers does not yield very positive results. Furthermore, in the case of cybercrimes, it is hard to determine the scene of the crime and location of suspects. Thus, utilization of digital technology and techniques like geo-mapping and geo-fencing, investigation of digital evidence such as IMEI, SIMS, digital photographs, ATM Transaction Logs and other digital devices are part of digital forensics. Below mentioned, are some other modern investigation methods deployed to trace criminals.

i . Forensic accounting and financial evidence

One field of forensic science, forensic accounting, refers to the analysis of financial information, including al transactions, past records and tracing source of transfers, etc., of the accused individual or entities, to reveal important information that can aid in legal proceedings especial y in cases of financial crimes. Forensic accounting is particularly useful for tracing Terrorism Financing activities and tracing back money trails to the original sources of income, such as donations made to terrorist organizations, or money made from drugs trafficking.

i i. Electronic records as evidence

With the use of information technology, the police department has started storing information pertaining to investigation in computers. The computer stores criminal records conveniently and efficiently. One consequence is making it easier for police to col ect and process information, eliminating the duplication of paper and electronic records and the multiple entries of same data.

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For example, the Punjab Information Technology Board (PITB) has done massive revamping of the outdated criminal record management system (CRMS) of the Punjab Police. “Previously it was a lengthy and tedious process to retrieve records of the individual criminals based on name, father’s name, caste and address. It was almost impossible to identify criminals of each district because there was no comprehensive and integrated criminal record system.” 234

The PITB has developed the CRMS based on Citizen National Identity Card Number (CNIC). It is a digitized system that contains personal details such as CNIC, appearance, phones, etc. of criminals. The idea is to maintain a comprehensive database containing complete criminal profiles, including personal information, physical appearance, modus operandi, gang, criminal history, fingerprints and photographs that can be easily retrieved via the biometric data. Moreover, the manual fingerprint record is successful y digitized and available in the CRMS database with a complete profile of individual criminals. A system like CRMS can be utilized in various ways to investigate a case. “If a victim of a mobile phone snatching incident reports

in a police station and he remembers some details of the snatcher, an officer can apply al the known filters and search the criminal in his own district and the Punjab server." 235 Additional y, the Criminal Record Identifier (CRI), an application in the CRMS, also utilizes the fingerprints to identify criminals by matching the fingerprints stored in the "Megamatcher Fingerprints Matching Library that has a matching speed of 20 mil ion fingerprints per second." 236 Moreover, on average, 50 to 60 criminals are being identified per day from different stations across Punjab due to this application.

Electronic records maintained by banks, and other financial institutions can also be used to trace evidence related to terrorism financing. In fact, the Financial Monitoring Unit is obliged under the law to maintain electronic records of the Suspicious Transaction Reports (STRs) received by the financial institutions. After receiving an STR, if the FMU

suspects that the act is related to terrorism, it may forward the case for further investigation to the FIA. These investigations may, however, run paral el to the investigation run by the CTD of the Police if the police discover a financial trail to the terrorism act.

Obtaining Information under the Investigation for the Fair Trial Act (IFTA)

This Act al ows authorized officers of the Services Intel igence Agencies and the police237 to file for a warrant of surveil ance if the applicant believes that a person is engaged in any suspicious conduct that may result in a scheduled offence being committed. 238

Actions that may be taken under the warrant

The judge may authorize the officers to take the fol owing measures against the suspects under the warrants, including but not limited to: interception and recording of telephonic conversations of the suspect with any person; video recording of persons, premises and events; interception of electronic transactions such as m-emails, SMS etc.; col ection of evidence through any modern device; and use of human intel igence, covert surveil ance and property interference. Taking over of electronic equipment that can be used in communication shal be al owed only when the authorized officer discloses

a substantial threat or possibility of an attempt to commit the scheduled offence. 239

Process to be fol owed once its established that the scheduled offence was likely to be committed.

If the data col ected via the warrant reveals any elements of any scheduled offence (under the PPC or ATA), the applicant may immediately proceed to register a F.I.R under Section 154 of Cr.P.C. and hand over al the obtained 234 *http://booklet.pitb.gov.pk/mobile/Flipbook.aspx, p32.*

235 Ibid.

236 Ibid.

237 *Section 3(a)*

238 *Section 5*

239 *Section 16*

evidence to the Investigation Officer. If the data col ected is insufficient to lodge an F.I.R, it wil be kept in custody and shal not be used without the court's permissioni240

g. Evidentiary Value of Forensic Evidence

The section below discusses the evidentiary value of various types of forensic evidence under the domestic legal framework.

In *Shamim Khan vs. The State*, *241* the Court held that the circumstantial and corroborating evidence on record in the shape of the site plan, postmortem report, and the result of Forensic Science Laboratory was sufficient proof to convict an accused if it was corroborated by substantial direct evidence.

In terrorism cases, however, an accused may be convicted solely based on forensic evidence under Article Sec. 27B

of the Anti-Terrorism Act, 1997. It was held in **Sikandar Ali Lashari v. State242 that** under *"Section 27-B of ATA 1997*

the accused might be convicted based on electronic or forensic evidence and other evidence that may be available through modern devices or techniques referred to under Article 164 of Qanoon-e-Shahadat Order." (Paragraph 13)

The court has made further use of corroborating circumstantial and forensic evidence to convict the guilty. In *Sadiq Ali vs State,* 243 the Supreme Court made use of both types of evidence, wherein a complaint paired with an eyewitness and a forensic analysis of blood found on the crime scene were used in conjunction with each other to dismiss the appeal against conviction.

Evidentiary Value of DNA

*Salman Akram Raja v. The Government of Punjab*244

The Supreme Court of Pakistan highlighted the prevalent legal issue surrounding DNA evidence in the case of *Salman Akram Raja v. The Government of Punjab*. 245 The Supreme Court ruled that DNA tests should be conducted and samples should be preserved in al sexual offences. However, at the same time, the Court cautioned that DNA evidence is not infal ible. In 2016, amendments were made to the Cr.P.C. under the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016, i.e. section 53A relating to 'Examination of a person accused of rape, etc. by medical practitioner'. Section 53A gives express authorisation to compel the accused to give his DNA sample if he is arrested on the charge of committing or has attempted to commit the offence of rape, any unnatural offence or sexual abuse. This, however, does not extend to terrorism cases, and the current legal framework does not make it mandatory to col ect the DNA samples in cases of terrorism.

Since DNA testing is not widely used in cases of terrorism, the evidentiary value of DNA results has been undermined.

In the murder trial of Benazir Bhutto, DNA evidence was obtained from the FBI's DNA laboratory in Quantico, Virginia.

The findings of the report were initial y included in the *chal an* submitted to the Court but were later excluded as they lost their evidentiary value. The evidentiary value was lost on two accounts. Firstly, because representatives from the FBI did not appear in Court to testify and secondly because the investigators could not establish a chain of 240 *Section 22*

241 2017 YLR Note 416

242 *2016 YLR 62 Karachi High Court Sindh*

243 2020 SCMR 679

244 *Salman Akram Raja v. The Government of Punjab*, 2013 SCMR 2013

245 *Salman Akram Raja v. The Government of Punjab*, 2013 SCMR 2013

custody of the evidence. Therefore, prosecutors in terrorism cases need to ensure that DNA evidence is properly submitted in Court with an identifiable chain of custody to ensure its admissibility.

In many cases, DNA reports have been deemed necessary. For example, in a sexual harrasment and rape case paired with forced conversion, the Supreme court held that positive report of commission of zina as well as detection of human semen were not the conclusive proof that offence had been committed by specific accused person rather requirement of DNA was mandatory is such cases. Further, positive report of availability of human sperm but matching thereof and positive DNA report were the conclusive proof of commission of zina by specific accused. 246

Answer towards identification of the culprit is dependant upon DNA only which could have linked the appellant/accused with commission of the offence when admittedly the victim became pregnant as a result of al eged rape/zina by the appel ant-accused. 247

Evidentiary Value of Forensic Evidence in light of Fingerprints

With regards to the science of fingerprints, the courts have also recognized that *: "the science of identification of finger-prints is a definite [science] and it is universally recognized that ridges on fingers of one person do not tally with ridges on fingers of any other person in the world."* 248 However, there are certain protocols that need to be satisfied to ensure the optimum legal utility of fingerprints evidence because such evidence may not provide a dependable foundation for conviction or acquittal. In light of this, the court opined that:

"*Opinion of Fingerprints Expert may point to the complicity of [accused] in the crime but when there is no other independent and above board evidence showing as to where did these fingerprints come from, in whose presence they were taken and whether the official taking them could take them in the absence of the concerned person whose PPO was prepared or whether such official could accept the Finger …*

When no answer much-less satisfactory comes forth, evidence of fingerprints alone cannot provide a dependable foundation for recording or maintaining the convictions of the appellants, especially when evidence of this type can be fabricated by the Investigating Agency at a subsequent stage. When this is the quality and quantity of evidence, it would not be in accord with the safe administration of justice to maintain the conviction sentences of the appellants." 249

Fingerprints are key pieces of evidence, and failure to put them forth on time can lead to a weak case. In a recent supreme court case, al other corroborative evidence was thrown out because the fingerprints and blood on the hatchet did not match the accused. 250

Evidentiary Value of Hair

*Syed Tahir Shah v. State*251

In this case, the Medical Officer, who examined the dead body of the deceased and issued the death certificate stated that death was caused due to suffocation and homicide. The Medical report of the deceased also determined that there was a wound on the left side of the neck of the victim that was probably caused by a sharp weapon. Moreover, the prosecution

witness, who bathed the dead body of the deceased, corroborated the existence of the two-inch wound on the left side of the neck of the deceased. The prosecutor concluded that the circumstances suggested that there was 246 *Shabbir Ahmed vs. The State*, 2020 MLD 995 KHC

247 *Muhammad Khan vs. The State*, 2020 PCrLJ(n) 10 KHC

248 1990 PCr.LJ 1057, [19]

249 2012 PCr.LJ 24, [12].

250 *Sahib alias Karo vs. The State*, 2020 PCr.LJ(n) 67 KHC

251 *Syed Tahir Shah v. State*, 2018 PCrLJ 242 Quetta High Court

an attempt to conceal the real cause of death to show that the victim had hung herself by means of an electric wire and *Narrah*.

However, it was held by the Court that the pieces of wire and *Narrah* could not cause a wound so deep and in fact, the deceased was tortured by means of sharp-edged weapon and kil ed prior to hanging her dead body. Furthermore, there were dust particles also present in her hair which indicated that the body was dragged from the floor to the point where she was hung. Thus, since medical evidence was in line with the circumstantial evidence the appeal against the conviction of the accused was dismissed.

Evidentiary Value of Forensic Evidence through Blood and Serologist Reports

The Supreme court recently reinforced the importance of the serologists' report: “Investigating Officers are under legal obligation to send blood-stained earth, crime weapons, and human blood for the serologist’s report. Failure to fol ow such practice would make the opinion of Chemical Examiner inconclusive, which could not be used as evidence.” 252

Imran Ishaque v. The State253

This case is an appeal from the judgment of the Trial Court where only one of the 5 accused were convicted. Since, there were no prosecution witnesses available, the case depended solely on circumstantial evidence. The weapon of the offence was recovered from the accused's possession and two blood-stained brick-pieces, five pieces of broken glass and a scrapper were recovered from the residential house of the accused upon his disclosure. However, the report of the serologist connecting the two pieces of bricks and five pieces of bottle/glass and "Nehla" iron, stained with human blood with the blood of the accused was inconsequential. The Serologist Report was therefore positive.

The Court held that circumstantial evidence needs to corroborate other direct pieces of evidence hence the appel ate court set aside the judgment of the lower court and the appel ant was thus acquitted.

The value of Forensic Evidence if there's no testimonial evidence available

In *Zakir Hussain v. State*[254] it was held that *"Where ocular account was deficient either because of non-availability of eye-witnesses, or where the occurrence was unseen, direct evidence was not available or where FIR was lodged against unknown culprits, investigating agency, in such circumstances, was left with no other option but to col ect, and rely upon circumstantial evidence."*

In a supreme court case, [255] a nurse was murdered. No motive was found for the respondent other than a past relationship with the deceased. Respondent was initial y acquitted on unavailability of witness (who resigned from giving statement) and recovery evidence being disbelieved. But later, the Petitioner's (father of deceased) leave was granted and warrant of arrest for the respondent was issued. This was on the basis of circumstantial evidence. Human blood stained chhuri (knife) was recovered from the accused at the time of arrest. Documents in the respondent's handwriting as well as his passport found in the deceased's room. He was also seen by witnesses escaping the crime scene (hospital) while holding a white dupatta supposedly belonging to the victim.

252 *Farooq vs. Musavvir Ahmed*, 2020 PCrLJ 328 KHC; See also: *Muhammad Arif vs. The State* 253 *Imran Ishaque v. The State*, 2017 PCrLJ 400 Lahore High Court

254 *2017 PCrLJ 757 Gilgit-Baltistan*

255 1987 SCMR 1762

In another supreme court case, 256 The initial Prosecution witness could not prove the commission of crime by the third accused beyond reasonable doubt. However, availability of sufficient circumstantial evidence resulted in accused's appeal being dismissed. The circumstantial evidence produced was that the deceased was last seen in the third accused's company. Accused/Appel ant were found in possession of deceased's car. Blood-stained knife found in possession of two accused's and the medical evidence showed that deceased had been kil ed with a sharp-edged weapon.

Evidentiary Value of an Expert's Opinion

Once the forensic evidence is analysed by the forensic agency and presented in the form of a report, experts from the relevant fields may be summoned to the trial proceedings to shed their opinion on the matter. An expert has been defined as, "one who has made the subject upon which he gives his opinion a matter of particular study, practice, observation, and who has particular and special knowledge on the subject." 257 Where the court is seeking an expert opinion, the court may first hear evidence corroborating the proficiency or skil of the expert/ An opinion cannot be given by an expert before it appears, by a preliminary examination, that he is a person of skil in the particular subject matter. 258

Land Acquisition Col ector Sargodha v. Muhammad Sultan259

In this case, the Supreme Court of Pakistan held that Under Art. 59 of Qanoon-e-Shahadat, 1984, opinion of a witness was only relevant and carried some probative value if he was an expert in the fields specified in the said Article. The Court held that for the purposes of giving an opinion under Article 59, the witness first has to establish expertise in the field through

academic qualification or experience. Without such validation, an opinion cannot be taken as having evidentiary value for proving a fact in issue.

The principles enunciated in the below-mentioned case laws further elucidate upon the evidentiary value of an expert's opinion.

Abdul Ahad v. The State[260]

In this case, it was held by the Peshawar High Court that the opinion of a Fingerprint Expert could point to the complicity of the accused in the crime but was not a conclusive piece of evidence if other questions were left unanswered. It was held by the Court that the "*opinion of such an expert would be considered relevant and admissible*.

In paragraph 16 of the judgment, the judges held that "*the level of expert evidence in criminal trials in this country is not at par with the countries equipped with advanced technology. These shortcomings create hurdles for Judges in administering justice in an effective and fair manner. The government shall strive to properly institutionalize the expert evidence by introducing the advanced technology to improvise the qualification of experts in acquiring a high degree of skil in the relevant field which would be of great benefit for achieving the set goals in the system of justice*".

256 1985 SCMR 373

257 Mr. Justice Doe, in *Jones v Tucker* cited in *A Treatise on the Law of Circumstantial Evidence: Il ustrated by Numerous Cases* (T & JW Johnson & Co 1896) 163

258 *A Treatise on the Law of Circumstantial Evidence: Il ustrated by Numerous Cases* (T & JW Johnson & Co 1896) 162

259 *Land Acquisition Col ector Sargodha v. Muhammad Sultan*, PLD 2014 SC 696

260 *Abdul Ahad v. The State*, PLD 2007 Pesh 83

Sohbat Ali vs. Muhammad Alam, PLD 2012 Supreme Court Azad Kashmir 1

The supreme court held that the report of the Finger Print Expert could be used to conclude the case without discussing any other evidence; The appeal was decided on the report of Fingerprint Expert. The court states: *"The opinion of an expert, founded upon personal observation is admissible, as well as opinions upon information derived from books. It must be shown upon what the expert finds his opinion, even if it is based on personal observation; the facts upon which the opinion is founded must be stated."*

Mrs Perin J. Dinshaw vs. Mubarak Ali, 2016 YLR Lahore High Court 251

A report of a handwriting expert is not binding on the court under the law, as relied by the court on Arts. 59, 60 and 61 of the QSO. It is relevant but does not amount to conclusive proof and is a weak type of evidence. The same is only confirmatory or exploratory of direct or circumstantial evidence.

Abdul Qadir vs. State, 2015 PCr.LJ Karachi High Court 235

The expert opinion under Article 59 read with 65261 of the Qanoon-e-Shahadat Order is merely circumstantial corroborative evidence, which is not binding on the Courts, whereas, in the absence of any other independent corroborating evidence the conviction cannot be awarded merely in view of such opinion. This is so particularly where there is reasonable doubt and the benefit of which has to be extended in favour of an accused.

Can a skil ed witness's statement be considered an opinion of an expert?

The testimony of a skil ed witness is an important source of circumstantial evidence which is admissible under Article 59 of QSO262. Furthermore, as a general rule, a witness cannot be asked for his opinion upon a particular question but an expert testimony of a skil ed witness is the exception to this general rule263. Moreover, the court decides whether a witness is an expert or not and such a decision is conclusive unless it appears that from the evidence that it was erroneous or founded upon some error in law. A court wil not normal y reverse their decision on such an account except in a clear and strong case. 264

Evidentiary Value of a Serologist Report

Jawad-ul-Haq v. State, 2018 PCrLJ 766 Peshawar High Court:

In this case, it was held that in the absence of direct evidence, a Serologist report would not be sufficient to uphold a life sentence conviction of an accused. The Court held:

"Such recoveries were considered as corroborative pieces of evidence, which are always taken into consideration along with direct evidence and not considered in isolation"

In *Farooq vs. Musavir Ahmed*265, the serologist's report proved that the weapon had human blood, but the prosecution failed to send clothes and earth samples with the victim's blood to the serologist. Thus, it couldn't be corroborated that the human blood was the victim's and prosecution failed to prove its case. In Muhammad Akbar 261 Grounds of opinion when relevant: Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

262 *Muhammad Irfan vs. State*, PLD 2015 Lahore High Court 78

263 *Mir Sanad Khan vs. State*, PLD 2014 Quetta High Court 113

264 *A Treatise on the Law of Circumstantial Evidence: Ilustrated by Numerous Cases* (T & JW Johnson & Co 1896) 163

265 2020 PCrLJ 328 KHC

alias Bhola vs. The State266, A Serologist report confirmed the presence of human blood on crime weapons. The accused's appeal was dismissed. In Muhammad Abbas vs. The State, the Serologist report proved the presence of sperm inside the P.W. confirming that sexual intercourse had been committed with her. 267

2004 YLR 3076

The doctor sought to be summoned medical y examined by the co-accused and the prosecution had failed to place on record the medico-legal report.

The Trial Court was obliged to summon such persons as court witnesses while granting an equal opportunity to the prosecution as wel as the accused to cross-examine them and find out the truth.

The Supreme Court held that the examination of fire-arm experts for purposes of ascertaining the nature of bullet or pellet is proper. 268 Additional y, under section 540269 Cr.P.C the Trial can order the necessary examination of a forensic science expert. The production of an expert and the report was held essential for a just decision by the court.

The court is empowered with very wide powers to summon the expert along with the report. 270

h. Colection and Preservation Techniques of Evidence to maintain chain of custody

Chain of Custody and Collection

The concept of a “chain of custody” or “chain of evidence” is important to understand.

A court wil require proof that evidence col ected during an investigation and the evidence ultimately submitted to the court are one and the same. To prove that the integrity of the physical evidence has been maintained, a chain of custody must be demonstrated. This chain shows who had contact with the evidence, at what time, under what circumstances, and what changes, if any, were made to the evidence.

Storage of physical evidence has legal implications. Evidence must be held in a secured area prior to transportation to court. Evidence reasonably assured to have been tampered with or by unauthorized persons because it was kept in an unsecured area may be inadmissible in court. Evidence should be maintained in a specific secured area, with limited access by authorized persons.

The fol owing information is included in the chain of custody:

•

List of evidence: the item number and a brief description.

•

Al transfers must include the date and time of transfer.

•

The signature of the individual releasing the evidence to another individual or location.

•

The signature of the individual transporting the evidence.

•

The signature of the individual receiving the evidence from another individual or location.

•

Reason for the transfer as needed. 271

266 2019 SCMR 2036

267 2003 PLD 863 SC

268 *Pervaiz Ahmad vs. Munir Ahmad*, 1998 SCMR 326

269Section 540 of the CrPC:

Provision for inquiries and trial being held in the absence of accused in certain cases. (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the court, if the Judge or Magistrate is satisfied for reason to be recorded, that any one or more of such accused is or incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the

proceedings, direct the personal attendance of such accused 270 *Muhammad Razzaq vs. Judge Family Court*, PCr.LJ 1989 Lahore High Court 1879

271 Forensic Investigation Handbook by Sindh Police, Sharjil Kharal, 2015

To satisfy legal requirements concerning evidence the investigator must be able to:272

a. Identify each piece of evidence, even months after col ection.

b. Describe the exact location of the item and the time when it was col ected.

c. Prove that from the moment of col ection until presented in court, the evidence was continuously in proper custody.

d. Be able to explain the changes that may have occurred in the evidence between the time of its col ection and its introduction in court.

• Biological changes

• Environmental changes

• Cross exchanges changes necessitated by analysis

General Guidelines for evidence col ection273

a. Col ect ALL items of any possible value (remember to photograph scene and items before removing/packaging).

b. Protect evidence from damage or contamination. Handle items only in non-contaminating, non-destructive ways. Examine only in non-destructive ways (i.e., naked eye, magnifying glass, strong or oblique light. Ultraviolet light, or photographs). Let the labs do thorough examination once the original state is accurately documented.

c. Mark ALL evidence or containers.

d. Note things out of place, missing or damaged.

e. Col ect standards or comparison samples for control purposes (i.e., rug stains and unstained rug; glass particles on suspect and from crime scene).

f. Seal and initial all containers of evidence for transport to the laboratory. ALL containers should be labelled with al pertinent case information.

g. Establish chain of custody.

h. Upon completing the crime scene investigation, secure area for future searches, if necessary.

i.

Upon completing the crime scene investigation, secure area for future searches, if necessary.

j.

Process evidence in laboratory.

k. Render reports and conclusions for submission into the judicial process.

General Guidelines for submission of evidence to the Crime Lab: Responsibility of the investigating officer274

Upon recovery of evidence it is the responsibility of the investigating officer to request the examination of physical evidence by the Crime Lab. This request wil be done through the Evidence Col ection Unit (ECU) who wil prepare or coordinate a letter of transmittal specifying the type of examination desired and be responsible for delivering the evidence to the Crime Laboratory.

Personal delivery of evidence is often the best method in complex or large cases.

Procedures:

272 ibid

273 supra note 198

274 Forensic Investigation Handbook by Sindh Police, Sharjil Kharal, 2015

a. All physical evidence delivered to the Evidence Col ection Unit for laboratory examination wil be properly packaged, preserved, and identified. A complete “Request for Laboratory Examination” form wil accompany the evidence and al chain of custody information wil be noted on the request form.

b. The Evidence Col ection Unit wil be responsible for transporting the evidence to the appropriate laboratory.

c. The Evidence Col ection Unit member delivering the evidence to the laboratory wil ensure that the chain of custody is updated in the tracking system. A receipt wil be obtained from the laboratory employee receiving the evidence that specifies by and whom the evidence was delivered at the laboratory.

d. Upon completion of the laboratory examination, a member of the Crime Lab wil return the evidence to the appropriate storage facility. The Crime Lab member wil indicate on the chain of custody from who it was returned to the storage facility.

e. The investigator’s chain of custody wil indicate al persons who had possession of the evidence, along with the name of the laboratory examiner.

f. Evidence held in the Evidence Col ection Unit for laboratory purposes wil be kept in designated storage lockers.

Collection of Oral Evidence

“An officer making an investigation shal issue an order in writing in the form 25.23 (i) to any person summoned to attend such investigation.” 275

The IO must ensure that the witness is credible and reliable and must try to look for a witness who fulfils the fol owing criteria:

•

He is a direct witness to a fact in issue

•

He has no personal motivation to involve the accused in the case

•

He is reputed to bear a good moral character

•

He has a strong personality to bear social pressure

•

He is not biased or partisan or pre disposed towards a party

•

He is not already involved in other litigations with the parties

•

He is not suffering from any medical inadequacies” 276

GUIDELINES TO FOLLOW

RELEVANT

REGULATION/ RULE

APPLICABLE

• Compulsory to record statements of the witnesses or accused or any other suspect Section 161 - Cr.P.C

in case diaries. 277The Police officer may record the gist of the statement.

• Reduce the statements of such people into writing except of those who give their

statements by reason of their duty, e.g., Medical Officer, FSL & DNA expert, serologist, etc.

• Statements under this section ought to be recorded and written by the IO.

275 Basic Investigation Handbook, Chapter 8, 161

276 Basic Investigation Handbook, Chapter 8, 160

277 ibid

• Such statements may become relevant as to their admissibility when any witness is Section 162 - Cr.P.C

cal ed for the prosecution in such inquiry or trial whose statement has been

reduced into writing.

• IO is required to make a separate record of such statements and is expected include Section 172 - Cr.PC

them in the case diary maintained under Section 172.

• The number of statements attached to a particular case diary, and the number of Police Rules 1934, s.

pages in each statement shal be noted in the case diary.

25.18

• Witness statements must be taken down promptly and verbatim.

Statement of a Wounded Complainant and Witness

• The IO shal prepare a charge sheet in accordance with rule 25.56 (1) and shal Police Rules 1934, s either: send the person for medical treatment to the Magistrate having jurisdiction 25.20

to take such person's deposition in the presence of the accused person OR if this

person refuses to be sent or cannot be sent, the officer shal then apply for an order

of detention of the accused after which the magistrate shal record the deposition

of the complainant or witness in the presence of the accused person." 278

• Copies of the Statement to be sent to the Accused within 7 days before 7 days of Section 265 C (I) (C) the initiation of the trial

Cr.P.C

• If any new fact that is relevant to the case comes to the knowledge of the witness Section 161 of the (after his first statement has been recorded) it can be recorded at a later stage of Cr.PC

the investigation

• The IO should ensure protection of the witness.

Sindh Protection Act

2013 and the ATA

1997

Measures to Avoid

• Such statements, if reduced into writing, are not expected to be signed by the Section 162 - Cr.P.C

respective person.

Any such statement or any record or any part of the same cannot be used for any

purpose at any inquiry or trial in respect of any offence under investigation at the

time when such statement was made.

• If a person knows or has reasonable cause to suspect that a terrorist investigation Section 21 A (6) - ATA is being conducted, and if he discloses any information or material piece of

evidence that is likely to prejudice an investigation; or if he interferes with that Section 21 A (7) -

which is likely to be relevant to an investigation, that is a scheduled offence under

the law. This could lead to imprisonment for six months to two years and/or fine. ATA

• Statements recorded by an IO u/s 161 shall not form part of the case diary Police Rules 1934, s.

prescribed by section 172, but shal be recorded separately and attached to the 25.18

case diary.

278 Basic Investigation Handbook, Chapter 8, pg 166

• Police should not elaborate upon witness statements because it may hinder the Prosecution’s case for corroboration with circumstantial or documentary evidence.

• The IO should aim to record the statements right after the FIR is lodged. In case

there is a delay, the police officer should offer a reasonable explanation to the court as this may affect the veracity of the witness.

Statements of the Accused

• Only a Magistrate of Second and First • Confessions made in police CrPC Section 164

class (and above) can record a

custody are inadmissible in court ATA Section 21H

confession by the accused.

• No individual can be coerced or

• In Anti Terrorism Courts confessions

incentivized to make a

made to the police are conditional y

confession. It has to be made

admissible in court. A confession of the

Voluntarily.

sort must be recorded and a

memorandum be made to the effect of

Memo format 1 given below.

• The confession recorded by the

Magistrate must be sent by him to the

Magistrate who is trying the case

• The Magistrate must fulfil certain

requirements before recording such a

confession. The form (given below)

‘RECORD OF A CONFESSION MADE BY AN

ACCUSED PERSON’ needs to be fil ed out

and attached to the report279

279**CrPC 164: (3)** A Magistrate shaft, before recording any such confessions explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shal record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; **364. Examination how recorded:** (1) Whenever the accused is examined, by any Magistrate or by any Court other than a High Court, the whole of such examination including every question put to him and every answer given by him, shal be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shal be shown or read, to him, or if he does not understand the language in which it is written shal be interpreted to him in language which he understands, and he shaft be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shal certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shal be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shal be written and signed by the Magistrate or Judge with his own hand, and shal be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under Section 263.

155

Recording of a Dying Declaration

• The person making the declaration shal if

• The witnesses recorded the dying Article 46(1) of the

possible be examined by a medical officer

declaration need to be not QSO

with a view to ascertain that he is capable

connected to the police 162 CrPC

to make the statement

department or the parties

• The dying declaration should be recorded

concerned.

by the Magistrate but if he is inaccessible,

• Details should not be missed

two reliable witnesses may record it

• If no witness is available and the person is

near death, then it may be recorded in the

presence of two or more police officers.

• It ought to be signed by the person

making it

• Must be recorded in written or question

and answer form.

• If recorded in the hospital, it should be

recorded in the presence of an unbiased

doctor or medical staff.

Format of a Witness Statement

Even though Section 161 does not lay down the form in which the investigation officer has to record the statement of a person but it may be in any of the fol owing format i.e.:

1. In the form of Questions and Answers

2. In narrative form” 280

280 Basic Investigation Handbook, Chapter 8, Pg 163

8.2.2 Sample Statement Under Section 161 Cr.P.C

FIR No:_____ u/s 302-324-427-34 PPC
3/4 Explosive Act r/w 7ATA

P.S: Artillery Maidan

Witness M. Arshad s/o Taj Mohammad (Late) Caste Gujar resident of H.No 7, St-12 Allah Wala Road, Karachi, was examined in the said case who stated as under:

" I reside at the above mentioned address and perform my duties as ASI in Traffic Police Karachi. I am posted at PIDC Traffic Post for the last one year. On 15-11-2005, I was on traffic duty along with constable Hameed Khan. I was standing near the intersection when a Toyota Corolla Car No. ACL-557 colour white came and stopped on the road in front of Muslim Commercial Bank, PIDC Branch. Since the car was obstructing the traffic, I approached the driver of the car. He was a young fellow. I told him to move the car to the Parking area. Pointing towards parking area, he said that his buddies are coming and he is leaving. I saw two persons. One of them was wearing pant and shirt while the other was wearing shalwar & qamiz who were dismounting from a Suzuki Mehran car. They came and boarded white Toyota car and went away. I came back at the intersection. After a few moments, a huge explosion occurred. I saw that the explosion had occurred in the same car which was left by the two boys. Other vehicle parked there also caught fire. The engine of the car fell at considerable distance from the blast area. Many people present in the surroundings of the blast were injured. I and constable Hameed Khan along with other people helped the injured. Meanwhile other police officers and ambulances came there and injured were sent to hospitals. I can recognize all the three suspected boys on seeing them who had parked the car which exploded and had left the place in their Toyota car No. ALC-557

Read over and found to be true.

(Signed)
Inspector. x.y.z
Investigation Branch
P.S _____ Karachi.

Check List

Statement Under Section 161 Cr.P.C.

S. No	Action	Yes	No	Not Applicable
1.	FIR No. section of law and P.S			
2.	Name, parentage, caste and address of witness			
3.	Statement of the witness (verbatim, or in Question and Answer form)			
4.	Statement read over to the witness and found to be true			
5.	Name and signatures of Investigating Officer			
6.	Caution: This statement is not to be signed by the witness.			

I have explained to (....name...), that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and 1 believe that confession was voluntarily made. It was taken in may presence, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him".

(Signed)
"Distt. Superintendent of Police."

Record of a Confession Form (Memo Format 1)

Col ection and Preservation of Documents

Appropriate Measures to be taken by the Investigation Team in the col ection and preservation of documents **SR.**

APPROPRIATE MEASURES

REASONS FOR APPROPRIATE

ADDITIONAL COMMENTS

MEASURES

1

Do not mark the document.

Markings destroy some of the Investigating officers should

identifying evidence original y not write upon any

2

Do not write upon documents

present in the document for documentary evidence

example, the investigating officer

except possibly as a means of

3

Do not use pencils, pens, dividers, may underline a text for emphasis.

subsequent identification of

or erasers as pointers.

This may be confused with similar

the document. In such cases

marks made by the accused in the

the identification marks

document.

should be restricted to initials

If these marks are placed on a

or numbers placed in a corner

document which later is to be on the back of the document.

introduced as court evidence, the

fact that the document is marked

158

might, in some instances, prevent or

hinder its admission in

the court.

4

Keep documents in envelopes or

This is important to prevent The ideal envelope or

protective folders

contamination of the document. covering should be heavy

Folding the document may cause

weight, transparent, and

the ink on it to smudge or cause a

made of cellophane.

crease in the document making the

Documents to be filed should

writing il egible. Furthermore, a fold
always be unfolded and
can also lead to a tear in the placed in protective
document.
envelopes or folders and
should be clearly marked so
that the contents are easy to
decipher.
5
Keep dry and away from excessive
This is important as exposure to
The possible effects of
heat and strong light.
heat and strong light may cause
moisture and heat should
alterations or changes to the always be given special
documents.
consideration whenever an
investigator is storing
documents for some length of

time. Storage spaces that are
unusual y damp or warm
should not be used.
6
Take documents to laboratory or This is important because the
If an anonymous letter or a
an expert without delay.
document should be examined in
piece of writing is found with
its most original state as soon as
fingerprints, the document
possible.
ought to be brought to the
laboratory unopened.
Moreover, a copy of the
document may be made for
purposes of further
investigation. Latent
fingerprints on paper become
indistinct or disappear

entirely within a very short

time, hence, evidence should

be brought to the laboratory

immediately upon receipt.

159

PRACTICES TO AVOID

ADDITIONAL COMMENTS

1

Do not mutilate by squeezing, Documents which are subject to laboratory examination should not be repeatedly folding, cutting, or creased or folded.

tearing.

If a document is subject to a tear, the investigator should not attempt to

mend it himself, but should let the laboratory examiner repair it. Under no

conditions should a document be pasted on another sheet of paper or

cardboard in order to repair a tear or to strengthen a fold.

2

Do not carry the document in a Documents that are carried in the investigator's pocket often become worn, pocket for a prolonged period of frayed, and dirty leading to mild destruction of evidence.

time/ make copies of the

documents for referral and Since Art. 76 of QSO al ows admissibility of secondary documents, it is subsequent usage

strongly recommended that copies of the primary document are made if the investigation is subject to extension. Officers should file or store documents at their headquarters if the documents are not needed during the investigation.

Questioned Document

These rules are primarily intended for the handling of questioned documents, such as handwritten or typewritten material about which there is some question concerning the author or manner of execution. However, they apply equal y wel to the preservation of specimens which are to be used for standards in handwriting and typewriting comparisons (i.e., specimens of handwriting or typewriting, the authorship of which is already established or admitted). In fact, any piece of handwriting, typewriting, or printing which might conceivably form a link in the chain of circumstantial evidence surrounding an investigation should be given the same care as documents whose importance is already known and recognized.

Colection and Preservation of Digital Evidence

This section elaborates upon how evidence can be extracted from Mobile phones, SIMS, computers and other devices. This Section wil also discuss how Audio and Video evidence should be col ected and preserved and shal include the best practices that general y apply to the col ection and preservation of audio video evidence. Lastly, this section highlights how cel ular devices, SIMs and computer and storage devices operate and how the Police may utilize such digital technologies to extract evidence.

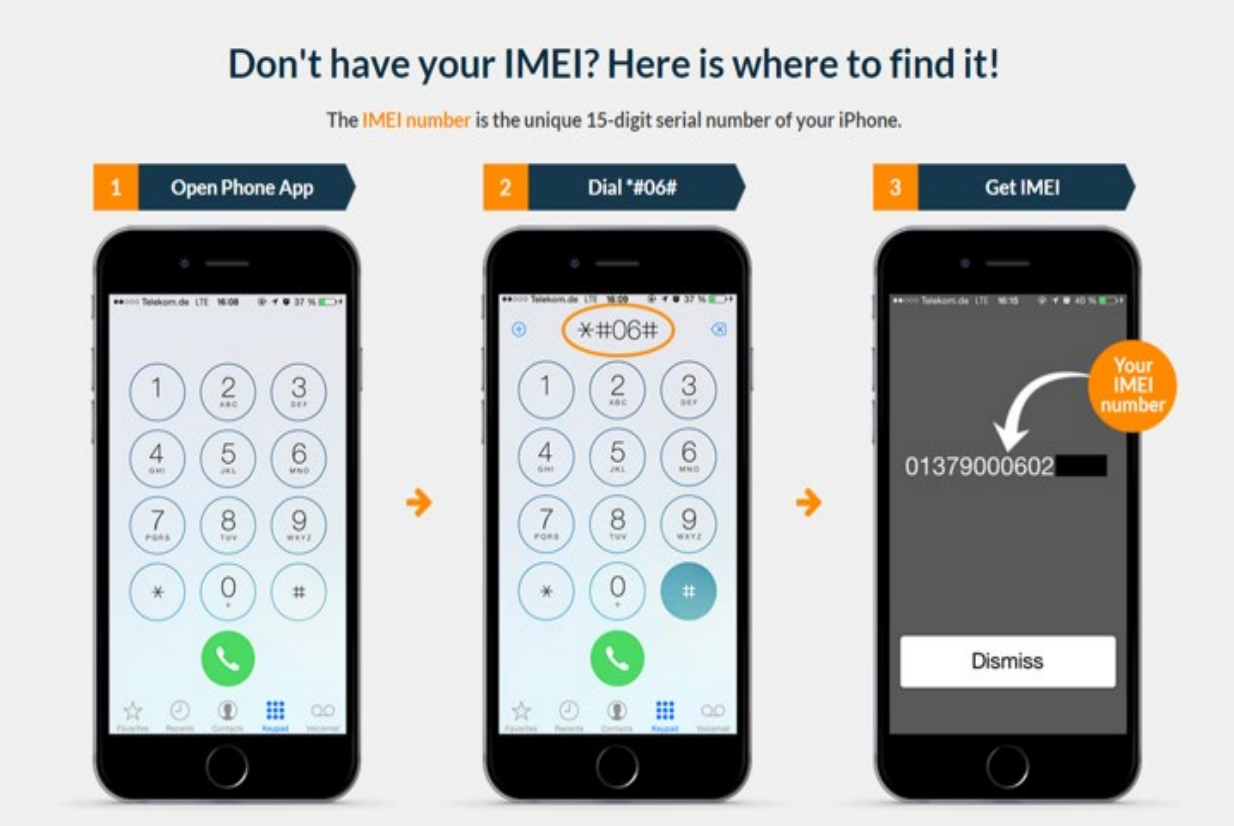
Cel ular Devices (Mobile Phones/Handheld devices)

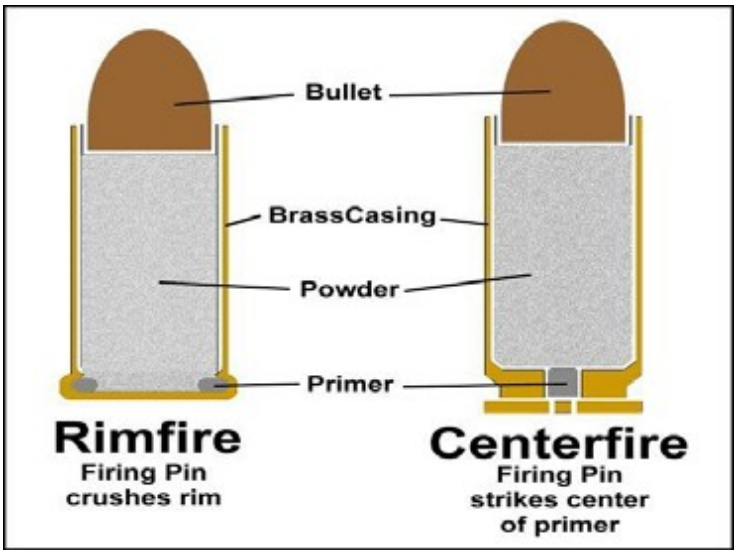
Mobile phones, handheld devices and SIMs (Subscriber Identity Modules) fal under cel ular devices and can be extremely crucial to determining Mens Rea or intention in a terrorist case.

For example, if Salman is accused of kil ing Malik, and Malik’s wife asserts that he had been receiving death threats from Salman over the past few

weeks, it would be very useful to investigate any means of communication that was used between the two (Malik and Salman). If emails or text messages are found to be of a violent or threatening nature, then they can be used as evidence to prosecute Salman.

To aid investigation processes, the National Action Plan instituted a SIM Verification System in col aboration with the National Database & Registration Authority and the Pakistan Telecommunication Authority. The SIM verification was a technique used to trace and identify suspicious terrorist activities. According to DG FIA Ammar Jafri, *'keeping in* 160


Don't have your IMEI? Here is where to find it!
The IMEI number is the unique 15-digit serial number of your iPhone.
1 Open Phone App
2 Dial *#06#
3 Get IMEI
*#06#
Your IMEI number
01379000602
Dismiss



view the fact that criminals in every society take advantage of technological advancements, registration and regular documentation of SIMs has become a priority for good governance in all countries'[281.](#) Moreover, the Investigation for Fair Trial Act 2013 al ows issuance of warrants for intercepting digital and cel ular communication because terrorist

communication often takes place digital y and thus these communication devices have become important to monitor.

Storage

Phones (especially smart phone) have mass storage capacities and can contain various mediums of information.

Memory cards can be taken from phones and analyzed to detect various patterns.

International Mobile Equipment Identifier (IMEI)

IMEI history shows how many SIMs were used in a particular handset. Details such as when, where and for how long these SIMs were used may also obtained if the IMEI is identified. This is given at the back of a phone or can be found out as below.

Significance

Devices may contain records like text messages, emails, internet history, images, videos and cal data. These records can play an instrumental role in tying a suspect to the crime. Similarly, discovering a device and examining its contents is useful for creating a profile for a suspect thereby making identification of the suspect easier.

Example:

If a person’s phone has several cal s from a proscribed person under the ATA, then an inference could be drawn that the person has linkages to a suspicious terrorist activity.

Subscriber Identity Module (SIM)

Cal Data Record (CDR**)**

CDR reveals details of cal s made using the SIM. (How many, to whom, what times, how

long the cal s were etc.)

IMSI and MSISDN

IMSI (International Mobile Subscriber Identity) is the number often printed on the SIM. The MSISDN (Mobile Systems International Subscriber Identity Number), simply put, is the number that is used to connect a cal to the mobile phone (Cel number). Both numbers put together are used to identify a mobile phone. ‘The IMSI number col ected from SIM cards helps the forensic investigators to identify the nationality and preferred language of the suspect. In 281 ‘National Action Plan: 53 million SIMs verified via biometric system’, Express Tribune, 2015

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addition to this, the figures under the MSISDN assist in identifying the cal s and simultaneous contact numbers that connected to the cal s’.

LAC number and CELL ID

LAC (Local Area of Coverage) is the number of a specific area from which a mobile is communicating. Cel ID is the shortest area of coverage of a mobile. Both can be obtained from the network providers of the SIM discovered. These together can help in determining a location of the mobile phone.

Significance

SIMs that seem suspicious can be traced back to the person under whose name the they are registered. Additional y, SIMs give us various other tools that can be used for positioning and locating their area of usage (using the LAC and Cel ID). Obtaining cal data records (CDR) from the phone or SIMs can be useful in placing the accused at the scene of the crime during the time at which it was committed.

However, CDR and information about SIMs might not be very fruitful in some cases, considering that often SIMs are not registered under the name and CNIC of the actual user.

Computers and other Storage Devices

Much like Cel ular devices, computers and other storage devices can be used to establish Mens Rea in a terrorist attack.

CD/DVD, Mass Storage Devices (Flash Drives, USB etc.)

Significance

These may contain information such as e-mail messages, Internet browsing history, Internet chat logs, photographs, image files, databases, financial records, and event logs that can be valuable evidence in an investigation or prosecution.

Example:

In the child pornography case in Kasur (2015), hundreds of videos were discovered where children were being filmed as they were raped or sexual y abused by grown men. The videos of the children were admitted into evidence for the trial of the accused in the ATC. They were used to establish the occurrence of the crime.

Computers and files, Internet/Browser History

Significance

This may include software, documents, photos, image files, e-mail messages and attachments, databases, financial information, Internet browsing history, log files, event and chat logs, and data stored on external devices. The device functions, capabilities, and any identifying information associated with the computer system; components and connections, including Internet protocol (IP) and local area network (LAN) addresses associated with the computers and devices; broadcast settings; and media access card (MAC) or network interface card (NIC) addresses may al be useful as evidence.

In order to retain the evidentiary value of evidence, it is essential that evidence remains intact and is in useable condition. The fol owing steps can be taken to ensure the same:

RELEVANT

GUIDELINES TO FOLLOW

PRACTICES TO AVOID

SECTIONS

PRELIMINARY

PFSA

Ensure that al digital evidence col ected is

Do not use the SIM or cel

STEPS

Guidelines

properly documented, labeled, marked,

phone of the accused

photographed and inventoried before it is

packed282

Do not show CDR etc. to

any suspect.

The video evidence should be col ected in its

Avoid altering the

original format as it is recorded on the recording condition of the device,

device (DVD, VCR, etc.) 283

when found.

The packing environment should have mild

Avoid packaging in UV

temperature and humidity. An extreme

light

environment can lead to deterioration of the

condition of potential evidence, for example CD

or Cassette. 284

PACKAGING

Use anti-static containers

Avoid using material other

MATERIAL

than paper, cardboard

Use containers that wil prevent contamination.

boxes and antistatic

materials for packaging

Use shock resistant packaging to avoid damage

Refrain from using plastic

containers

EXTERNAL

Col ect al power supplies, cables and adapters

ITEMS

for the devices seized

LABELS AND

Label evidence clearly and properly with at least

SEALS

the fol owing: 285

● case number

● item number

Seals must display the date when sealed. They

must also be tamper evident. This means that if

seals are opened or tampered, it becomes visibly

evident.

Copies of video or audio evidence must be made

and label ed. These copies can then be utilized at

the investigation and prosecution stage. 286

Forensic tapes must be used to seal the evidence

282 PFSA Guidelines: Remember that digital evidence may also contain latent, trace, or biological evidence and take the appropriate steps to preserve it.

283 Audio Visual Analysis, Punjab Forensic Science Agency, http://pfsa.gop.pk/?page_id=18

284 ibid.

285 ‘Collection and preservation of evidence’, George Schiro, http://www.crime-scene-investigator.net/evidenc3.html 286 ibid.

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The seals must display the initials of the

personnel creating the seal

STORAGE

Leave mobile devices in the state that they are

Do not Store in an

found i.e. in case where the device is switched

environment where

on, it should not be switched off or vice versa.

evidence can be exposed

to magnetic fields, dust,

Mobile Devices should be isolated from the

vibration or moisture

Network using Network Isolation Techniques I.e.

Faraday Isolation bags, Radio Frequency

shielding material, anti-static packing and

aluminum foils.

Inform the evidence custodian and the forensic

examiner that electronic devices are battery

powered and require prompt attention to

preserve the data stored in them.

TRANSPORT

Keep digital evidence away from magnetic fields Do not leave evidence

such as those produced by radio transmitters,

unattended during

speaker magnets, and magnetic mount

transport

emergency lights.

Avoid keeping digital

Other potential hazards are seat heaters and any evidence in a vehicle for

device or material that can produce static

prolonged periods of time

electricity. 287

CELLULAR

Take note of the contact list and go through

DEVICES

messages, images and emails.

Verify if the SIM has been registered and under

what name and place. Also determine where the

SIM was issued and reissued. It is important to

check with records held by the Pakistan

Telecommunications Authority (PTA).

Also take note of whether phone credit was

transferred or shared to a suspicious SIM.

Materials and tools for col ection

● Cameras (photo and video).

● Cardboard boxes.

● Notepads.

● Gloves.

● Evidence inventory logs: these are used to keep a detailed account of al the evidence col ected in an investigation

287 Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition, https://www.ncjrs.gov/pdffiles1/nij/219941.pdf 164

● Evidence tape.

● Paper evidence bags.

● Evidence stickers, labels, or tags.

● Crime scene tape.

● Antistatic bags.

● Permanent markers.

● Nonmagnetic tools.

● Faraday Bags288

Col ection and Preservation of Forensic Evidence

Forensic evidence can be very smal at times and may be concealed within the crime scene. Locating evidence can thus be tricky and though it can be done by the bare eye as wel , at times more tools may be required. Magnifying glasses are often used to see tiny fibres and hairs and different types of lights are used to find things that cannot be seen by the bare eye. UV light, lasers and high intensity lights are used to, for example, find fingerprints.

Forensic evidence can be crucial to an investigation because of how minute it can be and the procedure of col ecting materials is slightly different from other types of evidence. The Punjab Forensic Science Agency outlines this procedure in its guidelines and sets out four primary methods of col ection; Handpicking, Tape-lifting, Shaking and Scraping, while other methods of col ection include Vacuum Sweeping and Clipping.

METHOD

PRECAUTIONS TO TAKE

BEST USED FOR:

Handpicking

● Use forceps or other suitable tools to gently ● Hair

grasp the evidence item and careful y remove ● Visible pieces of debris290

the item from the substrate.

● Package and seal the evidence item in a

suitable container so that no contamination or

deleterious change can occur.

● The packaging is labeled with at least the case

number, item number, item description

exhibit number, date and initials of the person

who packaged it. 289

288 Faraday Shield is an enclosure used to block electromagnetic fields. A Faraday shield may be formed by a continuous covering of conductive

material or in the case of a Faraday cage, by a mesh of such materials 289 Punjab Forensic Science Agency Guidelines: **Hair Sample Standards**

Whenever hair is collected the roots should be included because considerable information can be obtained from the root material.

● **Head or Scalp Hair:** The hair should be representative of the center, front, back (including nape of the neck), and both sides of the scalp. Approximately 50 head hair should be col ected. The sample should include both pulled and combed hair and include any variations in color and length. If additional facial hair are collected (i.e. sideburn or beard hair), these should be packed separately.

● **Pubic Hair:** When indicated by the circumstances, col ect pubic hair. Approximately 30 pubic hair should be col ected.

● **Animal Hair:** Comb and pull hair; pulling is necessary as roots are needed for species identification in some animals. While a minimum number of hair is difficult to determine, good judgment should be used in collecting enough hair to represent the various types and colors of hair found on the animal. Hair should be collected from various areas of the animal including the head, back, belly, tail, etc.

Each sample should be packed separately and labeled with the body area from which it was collected.

290 Punjab Forensic Science Agency Guideline: Fiber evidence may be collected in the same manner as hair evidence. These methods include picking, vacuum sweeping, tape lifts, and scraping. Please refer to “Hair Evidence” section. **DO NOT** place fiber evidence loose in an envelope, but in a paper fold.

Fiber standards should be col ected from al the sources that the victim and suspect are suspected of contacting. Submit the entire item to be used as a fiber standard. If this is not possible cut a smal swatch (i.e. for a car seat), or pul random samples of fibers (i.e. for carpets). When 165

Tape-Lifting

● Remove the first several inches of tape from ● Hair

the rol to eliminate any possible ● Fingerprint evidence

environmental contamination.

● Obtain a section of tape from the rol . The size

of the section of tape needed depends on the

size of the item being examined.

● One or both ends of the tape are folded upon

itself to establish handles from which the tape

can be pulled away from the storage backing.

● The section of tape is applied to the item being

examined. The adhesive side of the tape wil

col ect any loosely adhering trace evidence.

● The col ected tape lift is applied to a storage backing (e.g. clear acetate sheet).

● Package and seal the tape lift in a suitable container so that no contamination or deleterious change can occur.

● The packaging is labeled with at least the case number, item number, item description exhibit number, date and initials of the person who packaged, 291

Shaking

● A section of examination paper is placed under the item to be examined.

● The evidence item is shaken over the section of examination paper.

● The section of examination paper is visual y examined for the presence of evidentiary material (e.g. hair, fibers, paint chips). Any evidentiary material observed on the

● Hair

● Debris

● Other surfaces that seem to be suspicious materials

examination paper is removed by

handpicking.

● The debris on the section of examination

paper is transferred to a container and sealed

so that no contamination or deleterious

change can occur.

● The container is labeled with at least the case

number, item number, and item

description. 292

Scraping

● A section of examination paper is placed ● Hair

under the item to be examined.

● Shoe soles may also be

collecting fiber standards from a vehicle, be sure to collect samples from all areas which may have transferred fibers (i.e. front and rear floorboard carpeting, al mats, front and rear seat upholstery and any trunk liners). These areas may appear the same but may be manufactured differently from each other and laboratory analysis may be needed to tel them apart.

291 Punjab Forensic Science Agency Guidelines, http://pfsa.gop.pk/guidelines_for_evidence

292 Punjab Forensic Science Agency Guidelines, http://pfsa.gop.pk/guidelines_for_evidence

● The evidence item is scraped with a clean

examined in this way

scraping tool over the section of examination

paper.

● The section of examination paper is visual y

examined for the presence of evidentiary

material (e.g. hair, fibers, paint chips). Any

evidentiary material observed on the

examination paper is removed by

handpicking.

● The debris on the section of examination

paper is transferred to a container and sealed

so that no contamination or deleterious

change can occur.

● The container is labeled with at least the case

number, exhibit number, date and initials of

the concerned person, item number, and item

description. 293

● If the sample being col ected is paint, then it

must reflect al layers of the painted surface.

Thus the paint's layers must be chipped down

to the unpainted surface. 294

Vacuum Sweeping

● A vacuum cleaner equipped with a filter trap ● Indiscriminate Col ection

is used to recover trace evidence from an item

or area. The filter and its contents should be

immediately packaged to avoid sample loss.

● The appropriate vacuum parts, filter, and trap

must be changed and rigorously cleaned

between each vacuuming to avoid

contamination.

● Consider using this method subsequent to

other col ection techniques as it is

indiscriminate and may result in the col ection

of a large amount of extraneous material. 295

Clipping

● Trace evidence can be recovered from ● Fingernails

fingernails by nail clipping, scraping, or both.

293 Punjab Forensic Science Agency Guidelines, http://pfsa.gop.pk/guidelines_for_evidence

294 Punjab Forensic Science Agency Guidelines: Reference Comparison Sample For Paint Analysis Col ect a paint standard. A paint standard is a known sample of the undamaged paint col ected from the same area as that of the damaged paint being analyzed.

Standard paints should be at least ½ square inch of solid paint with al layers represented (down to the substrate).

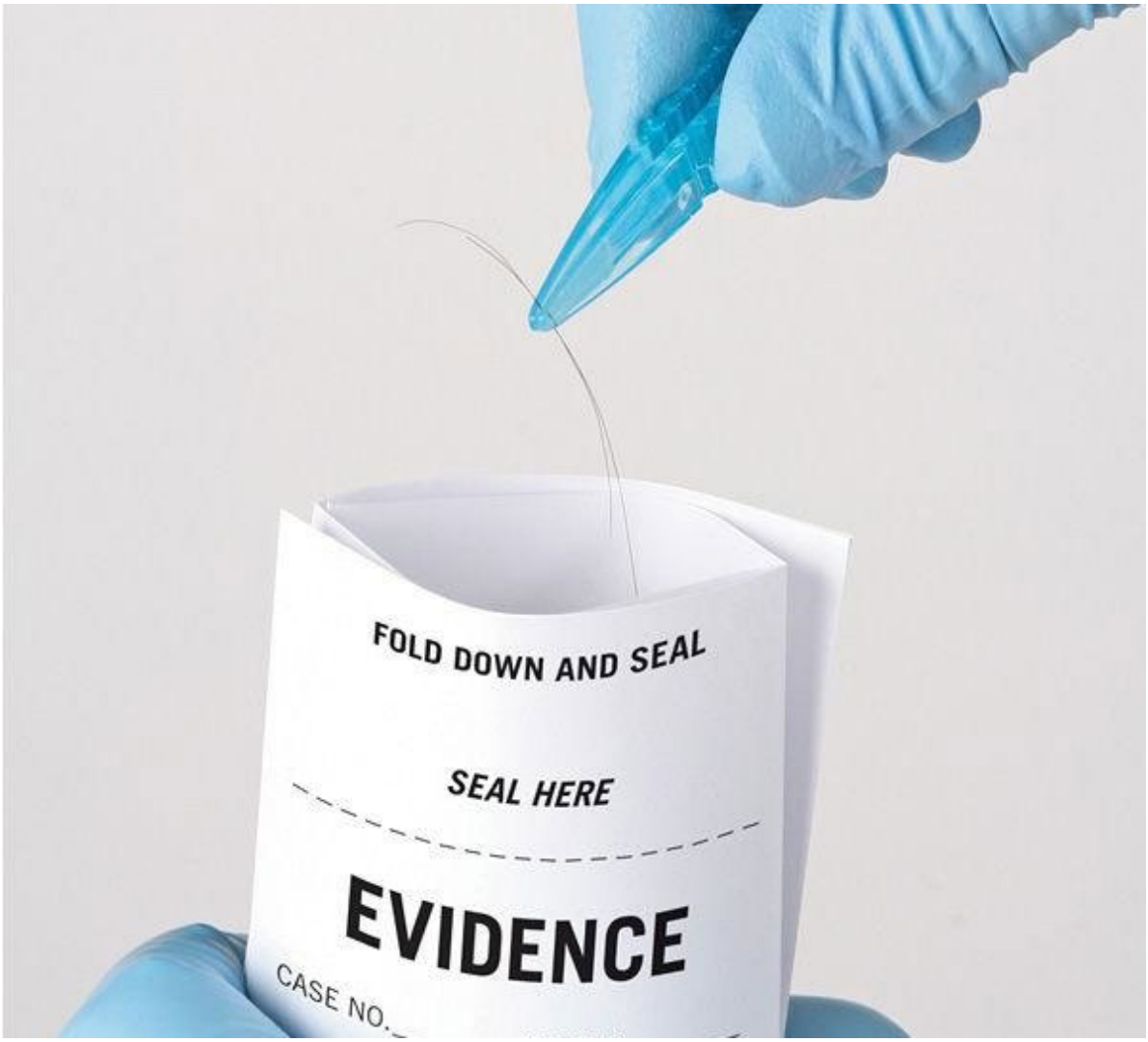
Take standard paint samples from near the damaged areas. Paint may vary in type or composition in different locations on a vehicle or item even though the color appears to be the same. Therefore, it is important that known paint standards be collected from each separate panel or area of the object showing fresh damage.

Place each paint standard in a different paper fold, seal and label.

In addition to the case and investigator information, the label must include the specific source of the sample e.g., make and model of the vehicle, known Paint samples must be collected from every vehicle or painted object involved in the incident, even if some known paint standard is included during the removal of questioned transfers.

295 Trace Evidence Recovery Guidelines, SWGMAT, 1998.

https://www.nist.gov/sites/default/files/documents/2016/09/22/trace_evidence_recovery_guidelines.pdf


FOLD DOWN AND SEAL
SEAL HERE
EVIDENCE
CASE NO.

Fingernails may be clipped with clean scissors

or clippers and packaged in clean paper.

● Fingernails may be scraped with a clean

implement to col ect debris from under the

fingernails. Package the col ected debris and

the scraping device as one unit, typical y in

clean paper.

● Commonly, fingernails from the right and left

hands are packaged separately. This does not

preclude the col ection of each or any nail

separately from al others, such as a nail with

obvious damage. 296

Handpicking

Tape-lifting

Shaking

Scraping

There are also certain general precautions that need to be taken before performing any of the above col ection procedures:

● Appropriate protective apparel, such as laboratory coats and disposable gloves, must be worn to prevent contamination from the clothing of the examiner. The apparel must be changed as necessary to avoid contamination or transfer between evidentiary items, locations, and personnel.

296 Trace Evidence Recovery Guidelines, SWGMAT, 1998.

https://www.nist.gov/sites/default/files/documents/2016/09/22/trace_evidence_recovery_guidelines.pdf

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● Equipment and work surfaces used during col ection and examination must be cleaned in an appropriate manner before processing begins and as often as necessary during processing to prevent contamination.

● Adhesive lift materials (used for collection, storage, or both) must be maintained in a manner to avoid contamination. Caution should be used to prevent tape edges from contacting any uncleansed surfaces. 297

It is also important that before col ecting or changing the placement of the trace evidence present at a scene, that photographs are taken to document its original state. Photography in *situ* is done because there is a lot that experts can determine from where and how the evidence was discovered. For example, patterns of bloodstains on a wal can show from where the attack originated, how tal the perpetrator was and if the victim was moved from where he original y fel .

The col ection for other types of trace evidence such as Gunshot and explosive Residue and bloodstain splatter is dealt with differently than general trace evidence.

Referred Agency

R.25.41 of Police Rules 1934, stipulates that the Superintendents of the Police are required to submit the samples col ected by them to the Chemical Examiner.

R.25.41 of the Police Rules also specifies detailed instructions related to the col ection that the authorized officer is required to fol ow:

SAMPLE

MATERIALS NEEDED

COLLECTION/PRECAUTIONS

Bodily fluids

● Wide mouthed

● Samples should be placed in bottles or jars

bottles

● Stoppers should be placed on the jars and should be tied

● Glazed jars

down with a leather cloth and must be checked for leaks

● Stoppers/Corks

● Knots of the cord must be sealed with the name seal of

● Boxes

the officer making the investigation

Stains

● Cotton or wool

● Surfaces with stains must be dried before packaging

● Wooden boxes

Blood stained

● Boxes

● Evidence should be marked with seals

Weapons, articles or

● Scissors

● And then sealed into parcels

Cloth

● HD Camera

● If the surface is too large to pack in its entirety, the blood

stain portion of it must be cut out with scissors and sent

for analysis

● Al stains should be documented through High Definition

photography

Sharp Weapons

● Boxes

● Sharp weapons must be packed in boxes, instead of cloth

so weapons do not pierce the packaging

Clods i.e. Earth or clay ● Wool

● Clods should be packed in wool and then put in boxes

● Boxes

297 Trace Evidence Recovery Guidelines, SWGMAT, 1998.

https://www.nist.gov/sites/default/files/documents/2016/09/22/trace_evidence_recovery_guidelines.pdf

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Organs

● Clean glass,

● Organs must be placed in wide mouthed jars and fit with

bottles/jars

the stoppers to ensure that contents do not readily

● Stoppers/corks

decompose.

Materials that may

● Preservatives

● Materials that decompose at a fast rate must be ful y

decompose

● Containers

immersed in the preservative.

(jars/bottles)

● The preservative may be a rectified spirit (in case of

poisoning) or a salt solution.

● Salt solution: 1 Tablespoon of salt and 4 pints of fresh

clean water

Further instructions

● On each container and parcel, a label must be fixed with a description of the contents; particulars may include:

Date/Time.

Victim’s Name (if applicable).

Location.

Col ector’s Name.

FIR Number.

Police Station Name.

Description of item.

Item number.

● The jars should be placed in boxes with packaging material to avoid breakages. The boxes are then to be covered with Garha cloth, sewed and sealed.

● The label should also have a seal; the same which was used in the fastening of the container. Seals should al be similar and the wax should be of the same kind. It should be the ordinary office seal and should be kept under lock and key.

● A copy of the label should be given in the inquest report or case diary.

● No letters should be glued on to exhibits that could interfere with the analysis

● A sample of the preservative added should be kept aside in case the sample container breaks before reaching the chemical examiner

● If two or more examinations are to take place, then the medical officer should complete one, label and seal it and then only commence with the second examination. Instruments must be cleaned before the examination

Col ection and Preservation of Bloodstain Splatter Evidence

Col ection of evidence from Bloodstains

For DNA analysis and BPA the col ection and preservation is done differently and various rules need to be adhered to.

Wet blood

Stains that are fresh and stil wet decompose quickly, which is why they must be dried before col ection. Wet blood on a dead body can be wiped with swabs and then dried before submission to the laboratory.

Time

There cannot be any unnecessary delay in the submission of samples to the laboratory.

Chain of Custody and Collection

Police Rules 25.46 establish that the custody of such samples must be sent by the Superintendent of police to the Chemical Examiner, who shal then forward samples to the Imperial Serologist who may then determine the source of the blood. The samples must be forwarded with a complete medico history of the case. Experts, wil be charged with determining various facts about the crime/incident from the blood splatter stains.

RELEVANT

PRECAUTIONS

STEPS TO AVOID

SECTIONS

Wet Stains

PR 25.33

Dry them before col ection.

Do not col ect them while

Swab them and al ow the swab to

wet.

air dry. Then place in envelopes

Do not place swabs in tubes

Stained Clothes or

Submit them to the labs in their

Do not cut pieces from the

Articles

entirety if possible

articles for evidence. Never

fold the articles (this wil

alter the patterns)

Large stained surfaces

Cut around the stain, including some Do not discard the

e.g. mattress

unstained area around it

remainder of the surface.

The investigating officer

should keep custody of

it. 298

Dry blood on a body

Scrape it into an envelope with a

Do not attempt to clean the

clean scalpel and send it to the lab.

blood

Alternatively, a swab can be soaked

in sterile water. Swab the dry blood

(this wil moisten it) and al ow the

swab to air dry. Then place in

envelopes.

Documentation

Photographs of the stain patterns

on larger items must be taken using forensic photography techniques. This is referred to as *Forensic Photography.*

Any visible stain patterns present and any visible damage to fabrics (e.g. cuts, tears, abrasion) must be properly documented.

Labelling

Stitch or tie the label onto the

Avoid pasting the label onto

article etc.

the article

The label should include the number and description of the articles

Labels must correspond with the invoice list of articles

Marking

Mark the article with circles around the stained area. Do not use ink or an indelible pencil to do so

Packaging

Package in clean, paper bags or Use plastic containers to envelopes

package blood stained samples

Documents to

A. By post:

Dispatch

1. Forward memo and invoice list of articles for examination.

2. Impression or imprint of seal used in the case.

B. With the articles:

1. Duplicate copy of forwarding memo and invoice list.

2. Duplicate impression or

imprint of seal used in the case.

Col ection and Preservation of Fingerprints

Material Required for Col ection

According to R.25.58 of Police Rules 1934, the Investigating officer shal be provided with fol owing material for col ection and preservation of fingerprints:

● One bottle of grey powder.

● One bottle of graphite powder.

● One camel hair brush.

● Folien paper.

● Fingerprint forms.

● Fingerprint ink.

● Appliance for fingerprinting dead bodies.

● One magnifying glass.

● One finger print impression pad and rol er.

Fol owing materials may also be useful in this regard299:

● Black and white film.

● Brushes.

● Chemical enhancement supplies.

● Cyanoacrylate (super glue) wand/ packets.

● Flashlight.

● Forensic light source.

● Lift cards.

● Lift tape.

● Measurement scales.

● One-to-one camera.

299file:///C:/Users/user/Downloads/Crime%20Scene%20Investigation%20Manual%20-%20US.pdf, Page 35.

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● (Grey & Graphite) Powders.

Procedures for Processing, Developing, Lifting and Labeling Fingerprints300

All officers and/or Crime Scene technician(s) wil adhere to the fol owing procedures for processing, developing, lifting and labeling fingerprints:

● Apply a smal amount of fingerprint powder to the brush.

● Hold the brush lightly.

Use short quick strokes with the tip of brush light over the surface.

When latent prints develop – stroke tip of the brush in direction of ridges.

Latent fingerprint powder is distributed evenly and smoothly by tip of the brush.

When latent print is ful y visible – brush away excess powder.

Use contrasting latent print powder (light surface use dark powder).

Place latent fingerprint lifting tape completely over latent print and smooth out any air bubbles.

Lift the tape from the surface and adhere to a latent lift card.

If black powder is used, then a white latent lift card should be used.

Document the fol owing information on back of the latent lift card

i. offense/case number,

i . lift number,

i i. location where latent lift was recovered, date, time,

iv. officer making the lift.

Latent fingerprints that are recovered from any crime scene wil be forwarded to the forensic science agency for comparison and analysis.

Col ection Guidelines301

In many instances, latent fingerprints can and should be developed at the crime scene by evidence technicians or crime scene search officers. Latent prints developed through traditional powder processing methods should be lifted and submitted to the laboratory. Detailed information concerning the case, date, location and orientation of the latent should be recorded on the back of the lift card.

If latent prints at a crime scene appear to be visible (patent prints), or if the lift process may pose unique chal enges, the latent should be photographed. However, if any item of evidence is to be submitted to the lab for processing, it is best not to attempt any field recovery of latent prints.

ITEM

METHOD

Non-porous or non-absorbent surfaces (Glass, General y, fingerprint powders should be used. Black powder is Metal, Tile, etc.) may be processed in the field. preferred because it produces the best ridge reproduction and

is easier to compare. For powders to be used, the surface must

be dry. Wet items should be ful y air-dried. .

300 https://www.salisbury.edu/police/Written_Directives/Chap83.pdf

301 PFSA Guide. http://pfsa.gop.pk/?page_id=40.

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Reminder

Whenever possible, non-porous items should be processed at

the crime scene and the processed latent print(s) should be

lifted, provided no other evidence (hair, fibers, blood, etc.) is

present.

Measures to Avoid

Unnecessary transportation and handling may damage or even

destroy a print(s). In some cases, Cyanoacrylate Ester

(commonly referred to as Super Glue Fuming) may be

considered.

This technique has proven successful in developing latent prints

on items such as plastic baggies, Firearms, Styrofoam, and some

types of leather.

Porous or absorbent surfaces (Paper, General y, a variety of chemical processes are available. The Untreated Wood, Cardboard, etc.)

photography of chemical y developed latent prints is essential.

Prints may fade or even completely disappear from the surface.

Examples of Chemical Processes

Cyanoacrylate Ester, Ninhydrin, Physical Developer, Amido

Black.

Dry Paper

Dry paper items can be col ected and placed into plastic check

(document) protectors or plastic bags (zip-lock).

Wet Paper

Wet paper items should be air dried and once dried can be

packaged.

Additional Notes

● Identifiable prints have been developed on items that have been exposed to water.

● Care should be taken when handling these items.

● Avoid excessive amount of handling, even when wearing vinyl or cloth gloves. Glove marks can develop with certain processes.

Col ecting Patent Prints

Patent prints are col ected using a fairly straightforward method i.e. photography. These prints are photographed in high resolution with a forensic measurement scale. Investigators can improve the quality of the

images by using a low-angle or alternate light sources and/or certain chemicals or dyes during photography, but this is usual y not necessary. 302

COLLECTION OF PATENT PRINTS

Precautionary Measures

Measures to Avoid

302http://www.forensicsciencesimplified.org/prints/Fingerprints.pdf.

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● For visible prints on smal objects, such as a ● Avoid pressing or touching the impression with your window pane, col ect the entire object.

finger or any object to see if the substance is dry or

● If the item is too large to submit, such as a

tacky. Doing so may damage the print.

bloody patent print on a wal , it may be ● Unnecessary transportation and handling may necessary to cut out a section of the wal with

damage or even destroy a print(s).

the patent print.

● Be sure to leave a reasonable amount of wall

surface material surrounding the patent print.

● A protective covering may be placed over the

print provided that the covering does not come

into contact with the print.

− example: If the print is on a door, a small

paper box can be taped to the door, over

the print for protection.

● Photographs are important because damage to

the impression may occur during attempts to

remove the surface containing the print.

Submission Reminders

Indicate all requested forensic examinations on the Request for Laboratory Examination Form. If it is a resubmission, note down the previous Forensic Laboratory number in the appropriate space on the request form.

PROCESSING OF EVIDENCE

Precautionary Measures

Measures to Avoid

● Ensure that sharp objects such as broken glass ● Do not process any items that you are planning to or knives are packed safely and are properly

submit to the laboratory.

labeled.

● Do not place tape over items of evidence where you

● Good quality known prints are important and

think there might be latent prints.

necessary.

● *Paper bags are not considered to be good packing*

● If suspects are known, obtain a set *of Major*

materials for sharp or broken objects. Sharp objects

Case Prints, or an original set of fingerprints and

can easily puncture the bag and cause injury.

palm print cards and submit them with the

evidence.

● Clear, ful size copies of attested known

fingerprints may be submitted with the

originals if the originals are not available.

● Take elimination fingerprints of the victims,

family members, caretakers, etc.

Colection, Preservation and Transport of Evidence of Gunshot and Balistics Evidence

In order to minimize safety risks and contamination of evidence the fol owing measures should be fol owed while packing the evidence: **303**

303 PFSA Guideline. <http://pfsa.gop.pk/?page_id=37> .

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● Every evidence exhibit must be packaged separately.

● Every firearm must be packaged in unloaded condition with safety on.

● There must not be live rounds in the chamber of the firearm, magazine or in the parcel.

● Every cartridge case and bullet must be packaged separately.

● Evidence submitted for Gun Shot Residue (GSR) analysis must be packaged in a hard box instead of cloth bag or paper envelope. Layers of the clothes containing GSR must not touch with the other layers. Clothes must be wrapped by placing a white paper sheet between the layers of clothes before packing it in a hard box.

● For serial number restoration of firearms, the area containing obliteration should be marked clearly if there is more than one location of obliteration.

● For trajectory analysis, vehicles must not be washed or cleaned at al prior to examination. Suspected bullet holes must be covered with white paper.

● Seals must be intact

● If a firearm is recovered from water or any other liquid, then the firearm must be submitted with the same sample of water or liquid from which was recovered.

Collection, Preservation and Transport of Evidence of Explosive Residue[304]

The fol owing table outlines the precautions necessary when col ecting explosive residue which must not under any circumstances, be contaminated.

EXPLOSIVE RESIDUE

Part of Explosive Residue

Authority/ Law

Precautions

Post explosion debris and

Punjab Forensic

Send to the lab so that they can

components (such as pipe

Science Agency

be examined under the

bomb fragments, end caps,

Guidelines

microscope and/or extracted for

plastic bottles, paper tubes,

analysis.

etc...)

Materials that are distinct and

easily separable should be sent

in separate containers

For example: the liquid and the

foil bal s from a plastic bottle

would be sent as three separate

items: The Bottle, The Foil, and

The Liquid

Containers, Material and

Punjab Forensic

Glass jars or paper envelopes or Metal containers

Seals

Science Agency

bags can be used for packing.

and some plastic

Guidelines

containers should

Wear nitrile gloves and dispose

be avoided.

them after col ecting a sample

and put on fresh ones before

col ecting another sample.

Ensure can lids are tightened

304 PFSA Guideline. <http://pfsa.gop.pk/?page_id=37> .

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Plastic bags must be heat sealed

completely with no flaws in the

seam.

6. IMPORTANCE OF EVIDENCE IN RECONSTRUCTION OF A CRIME SCENE

I. IMPORTANCE OF CRIME SCENE RECONSTRUCTION305

Crime scene construction is often useful to determine the actual course of a crime by narrowing the possibilities that resulted in the crime scene. The possible need to reconstruct the crime is one major reason for maintaining

the integrity of a crime scene. It should be understood that reconstruction is different from ‘re-enactment’, ‘re-creation’

or ‘criminal profiling’. Re-enactment in general refers to having the victim, suspect, witness or other individual re-enact the event that produced the crime scene or the physical evidence based on their knowledge of the crime. Recreation is to replace the necessary items or actions back at a crime scene through original scene documentation.

Criminal profiling is a process based upon the psychological and statistical analysis of the crime scene, which is used to determine the general characteristics of the most likely suspect for the crime. Each of these types of analysis may be helpful for certain aspects of a criminal investigation. However, these types of analysis are rarely useful in the solution of a crime. Reconstruction is based on the ability to make observations at the scene, the scientific ability to examine physical evidence, and the use of logical approaches to theory formulations.

II. BASIC PRINCIPLES FOR PHYSICAL EVIDENCE AND RECONSTRUCTION306

The foundation of crime scene reconstruction is established by fol owing the basic principles used in the forensic examination of physical evidence. The Locard theory of transfer is the fundamental basis of any forensic analysis.

Although the lack of transfer has limited value in forensic laboratory examinations, it stil has significant importance in crime scene reconstruction.

III. RECOGNITION307

Any type of forensic analysis usual y starts from recognition of the potential evidence and separation of this from those items that have no evidential value. As discussed in the previous chapters, once the evidence is located, every effort and precaution should be used to preserve, to document and to col ect this evidence. Laboratory analysis and comparisons of physical evidence are used to identify objects, substances, and materials, and to trace its origin. Once an item is identified it is then compared with known

reference materials or standards. Depending upon the outcome of the comparison between the questioned sample and the known samples, one can then attempt to individualize the evidence and determine its origin. Once the crime scene appearance has been studied and the examination of physical evidence carried out, the crime or case can then be reconstructed.

Any type of reconstruction general y starts from recognition. Unless the potential evidence can be recognized, no further reconstruction can be carried out. Once potential physical evidence has been recognized the investigator should always make every possible effort to properly document, col ect, and preserve the evidence. If a question 305 Chapter 10, 'Crime Scene Reconstruction' 1. http://forenzika.unist.hr/Portals/6/docs/studenti/Crime%20Scene%20Reconstruction.pdf.

306 supra note 99, pg2.

307 Ibid.

arises, the investigator should always contact an expert in the field before any alteration of the evidence is done.

This is important because most conditional evidence and pattern evidence can be easily altered or destroyed. It is very important to emphasize that once such evidence has been altered, the ability to conduct a reconstruction, wil be limited.

IV. IDENTIFICATION308

Identification is a comparison process, which utilizes the class characteristics of a standard object or known substance to compare with the evidential item col ected from the crime scene – by comparing the physical properties, morphological properties, chemical properties and biological properties. General y, Identification is also referred to as Classification, because the process involves categorizing an object as part of a larger class of objects. Based on various properties a very smal piece of fiber may be identified as carpet fiber, thus belonging to that class of evidence.

The identification of persons also starts with the same logical process of physical type of identification that uses properties such as the height, weight, size, race, and hair and eye color, etc. to include or eliminate someone. Then more specific measurements can be carried out to individualize a person. However, if one identifies a friend or relative, one general y uses a combination of class characteristics and the special features (individualizing characteristics) of the person and then compares them to a mental picture of the person. This process of comparison is the same process used to identify a hair, weapon, or clothing.

V. INDIVIDUALIZATION[309]

Individualization is unique to forensic science; it refers to the demonstration that a particular sample is unique, even among members of the same class. It may also refer to the demonstration that a questioned piece of evidence from a crime scene and a similar known sample of evidence have a common origin. Thus, in addition to class characteristics, objects and materials possess individual characteristics that can be used to distinguish members of the same class.

The nature of these individual characteristics varies from one type of evidence to another, but forensic scientists try to take advantage of them in efforts to individualize a piece of physical evidence. Some types of evidence can be truly individualized, but with some other types an approach to the goal of individualization is possible. These types of individualizations are referred to as partial, and in some cases they are nothing more than refined identifications, such as genetic marker determination from a bloodstain, DNA typing of semen evidence, or trace elemental analysis of paint chips. The term identification is sometimes used to mean personal identification (the individualization of persons). Fingerprints, for example, can be used to ‘identify’ an individual. The identification and individualization analyses of physical evidence and the conclusions drawn from them are important ingredients in a final reconstruction.

When an item of physical evidence is identified but cannot be truly individualized, it wil always have similar class characteristics; for this reason, statements about how similar these class characteristics are can sometimes be made.

This means that even though it may be almost impossible to prove that the car paint on a hit and run victim came from a particular vehicle (the company may use the same paint on several cars), however the similarities between the sample from the scene and from the car in question may be used as compelling evidence. The degree of similarity of particular evidence or characteristics depends on many factors, and varies from being fairly easily calculated, as in the case of blood groups, to being limited to only broad estimates of similarity.

308 Ibid.

309 supra note 99, pg3.

VI. STAGES IN RECONSTRUCTION[310]

Reconstruction is considered a *scientific fact-gathering process.* Reconstruction general y involves a group of actions that wil set the stage for crime reconstruction. There are the five separate stages commonly used in the process of reconstruction i.e.

- Data col ection
- Conjecture
- Hypothesis formulation
- Testing
- Theory Formation

VII. PATTERN EVIDENCE IN RECONSTRUCTION[311]

Pattern evidence at crime scenes is extremely valuable in the reconstruction of crimes and can be used to prove or disprove a suspect’s alibi or a witness’s version of what took place at the crime scene, to associate or dissociate the involvement of persons or objects in particular events, or to

provide the investigators with new leads or information for further investigation.

Pattern evidence is general y created by the contact of two surfaces (persons, vehicles, or objects) that results in the formation of impressions, imprints or markings. In some cases, the contact may be a transfer of material from one surface to another resulting in pattern evidence in the form of a stain or deposit. Pattern evidence also results from the fracture, breaking or cutting of an object. The fol owing is a list of pattern evidence commonly found at different crime scenes:

1. Bloodstain patterns

2. Glass fracture patterns

3. Fire burn patterns

4. Furniture position patterns

5. Track-trail patterns

6. Tire or skid mark patterns

7. Clothing article damage or position patterns

8. Modus operandi and crime scene profile patterns

9. Projectile trajectory and powder residue patterns

10. Injury or wound patterns

VIII. BLOODSTAIN PATTERN ANALYSIS FOR RECONSTRUCTION312

Bloodstain pattern analysis seeks to define the facts surrounding an investigation by the use of the physical nature of bloodstains. Oftentimes, the bloodstain patterns provide a window to the past. The bloodstain patterns reveal not

‘who’ but ‘what’ with regard to the circumstances of bloodshed. The ‘what’ of bloodshed is the result of careful examination and study of the bloodstains’ appearance at the crime scene. The fol owing are some examples of how reconstruction can be made by the study of the bloodstain evidence:

● Direction of travel of the blood droplets

● Distance of blood source to target surface

310 Ibid.

311 supra note 99, pg3

312 supra note 99, pg7

● Angle of impact of blood droplet

● Type of blood droplets

● Determination of blood trails, their direction, and the relative speed of motion

● Nature of the force used to create the bloodshed

● Nature of the object used to cause bloodshed, the number of blows involved, and relative location of persons/objects near bloodshed

● Sequencing of multiple events associated with the bloodshed

● Interpretation of contact or transfer patterns

● Estimation of elapsed time and volume of bloodshed

IX. GLASS FRACTURE PATTERNS313

Glass fracture patterns are most often associated with burglary, criminal mischief, shooting incidents, and fire scenes.

The most common types of information that can be obtained by studying glass fracture patterns are:

● Direction of impact force applied (from inside out or outside in).

● Approximate force of impact

● Approximate angle of impact of force

● Determination of the type of glass fracture

● Determination of the sequence of firing, direction of firing, and the type of firearm for the projectile holes present

● Estimation of the fire temperatures, direction of fire travel, and the intensity of heat from the melted glass The use of glass fracture patterns in crime scene reconstruction relies on careful recognition, documentation, and study of radial and concentric glass fracture markings. Other information for reconstruction is obtained by analysis of rib marks, spatial relationships, crack marks, and the condition of any melted glass. To conduct even a basic reconstruction based on glass fracture evidence, investigators should be familiar with the different categories of glass and general y how each type of glass fractures and each type of class has certain characteristics, and wil fracture differently.

For example, plate glass is a common variety of glass used to make windows and mirrors. When plate glass is exposed to a force significant enough to rupture the surface and break the glass, pie-shaped glass shards are formed. If broken glass remains in the frame the observed fracture pattern wil consist of a center point, where the force contacted the windowpane, with radiating (radial) fracture lines going out from the center point. In addition, there wil be fracture lines running perpendicular to the radial lines, concentric fracture lines. By careful y examining a broken edge of a piece of glass along a radial line, you can determine the direction of force. This analysis is helpful in determining from which side of the glass the window was broken. Investigators can use this information to confirm a false burglary report by showing that the window was broken from the inside out rather than outside in as reported by the homeowner.

X. GLASS FRACTURE DISTRIBUTION PATTERNS IF STRUCK BY A BULLET[314]

When bul ets strike or penetrate glass the subsequent fracture lines can reveal information as to the location of the projectile hole, direction and approximate angle of incidence, and number of sequence of projectiles fired through the glass. In addition to the information obtained by examination of the fracture patterns, the distribution of glass debris can 313 Ibid.

314 Ibid.

be helpful in shooting reconstructions. The starting and ending points, as wel as the length of the glass debris field, may provide information as to where the window(s) were initial y broken, and the movement of the vehicle after the window(s) were broken.

XI. FIRE BURN PATTERNS[315]

Fire burn patterns often provide information on the various factors which led to or caused a fire. Detailed study of the burn patterns general y helps in determining the point of fire origin, the direction of fire travel, and the degree of damage of a fire, which may contain clues for arson investigations. The fol owing is a partial list of common patterns found at fire scenes:

- Inverted cone or ‘V’ pattern
- Multiple points of origin burn patterns
- Low burn pattern configurations
- Depth of charring patterns or al igator patterns
- Trailer patterns
- Smoke stain pattern Melted material patterns
- Concrete spal ing patterns

Every fire forms a pattern that is determined chiefly by the configuration of the environment, the availability of combustible material, and the type and intensity of the fire. From a study of the fire patterns, and a determination of any deviations from normal or expected patterns, an experienced fire investigator can reconstruct a fire scene.

XII. SHOOTING SCENES – INVESTIGATION AND RECONSTRUCTION316

Reconstruction of shooting scenes is often necessary to determine several factors critical to the investigation.

Determining the manner of death – homicide, suicide, or accidental – may be difficult without a reconstruction. In addition to providing investigative information and assisting in accurate conclusions, shooting scene reconstructions can be used to help a grieving family cope with the harsh reality that a loved one took their own life. A reconstruction can also provide information as to the relative location(s) of the shooter(s) and victim throughout the incident.

Moreover, a reconstruction can help determine the muzzle-to-target distance, which can be a pivotal factor in distinguishing between a homicide and suicide. Also, trajectory reconstructions can be performed to provide valuable information that can in many cases prove or disprove suspect, victim, or witness accounts of shooting scenarios.

In bal istic analysis, there are several techniques that focus on distinguishing the elements in the material col ected from crime scene and connecting them to the source of the crime. For example, bal istic comparisons of bul ets and the guns al ow the examiner to identify the source of the bullet i.e. the kind of ammunition that has been used. This examination process is sometimes referred to as bal istic fingerprinting. 317 Like the process of physical matching, this is also a two-level process.

XIII. BALLISTIC FINGERPRINTS

In order to understand the process of fingerprinting i.e. Level 1 and 2, it is vital to shed light the unique characteristics of a gun including the various

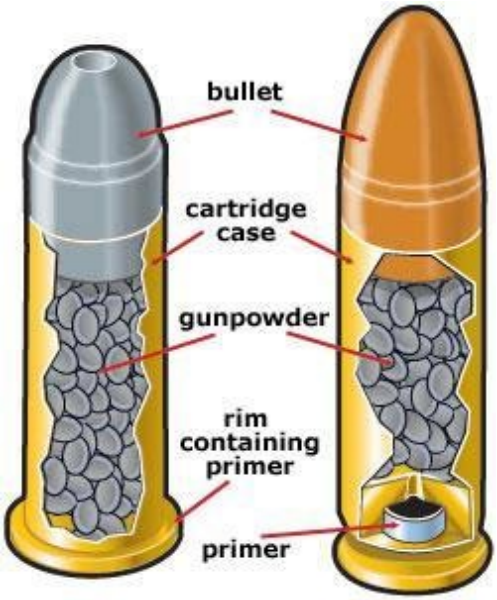
components of a cartridge. 318

315 supra note 99, pg14

316 Ibid.

317 Rod Gehl and Darryl Plecas, *Introduction to Criminal Investigation: Processes, Practices and Thinking* (January 2018) 161.

318 Rod Gehl and Darryl Plecas, *Introduction to Criminal Investigation: Processes, Practices and Thinking* (January 2018) 161.



Cartridges and its components

There are two types of cartridges: i.e. centrefire and rimfire. (The most common rimfire cartridge used today is the

.22 Long Rifle).

The image below differentiates between the various components of a cartridge.

1. Case: The case holds the primer, powder and the bullet

2. Bul et: The bul et is the part of the cartridge that strikes the target.

2. Primer: The primer compound explodes when struck by the firing pin and ignites the powder.

3. Gun Powder: The powder burns and creates gas to push the bullet through the bore and out of the muzzle.

Hence, each component of the cartridge may be examined forensical y to identify the specific gun that was used.

Moreover, as the bullet passes through the gun, the barrel produces individual markings in addition to a bul et's *land and groove impressions*. It is these unique markings that al ow an examiner to match the bul et to the firearm.

Level One : At Level One, cartridges are classified by the caliber.

Caliber

For bal istic purposes, guns are classified by their calibre, chambering and ejector mechanisms, and firing pin, namely either centre-fire or rim-fire.

In guns, particularly firearms, caliber or calibre is the approximate internal diameter of the gun barrel, or the diameter of the projectile it shoots. At the

bottom of the case of a centerfire cartridge there is usual y a number stamped.

(See the image below) This number signifies the calibre of the gun. Hence, this could be one technique that the examiner may use to identify and locate the weapon that was used, provided the bullet was recovered from the victim.

For example: If the bul et recovered from the victim has a diameter of 0.357 inches, the examiner may conclude that the metre calibre of the gun was 9mm and usual y handgun cartridges are known to have a 9mm calibre. Once the gun is located, the number stamped at the bottom could be verified with the report of the examiner.

Moreover, eliminations of suspect weapons can often be made at Level One. For instance, a .38 calibre bul et removed from a crime scene cannot have been fired from a .22 calibre weapon. Or, that same .38 calibre bul et showing marks from an ejector mechanism could not have been fired from a .38 calibre revolver that does not have an ejector mechanism. 319

Level Two: At Level Two, the more decisive bal istic fingerprint comparisons are often made using the fol owing methods:320

● Striations Matching;

● Chamber Markings;

● Firing Pin Comparison; and

● Ejector Markings.

1. Striations Matching321

Bul ets fired from either a handgun or long rifle, other than a shotgun, fire a single projectile each time. This fired projectile is a lead or lead composite bullet. When fired, this bullet travels down the barrel of the gun and begins to spin because the inside of the gun barrel has been intentional y machined with long gently turning grooves, cal ed rifling. These grooves catch the soft-lead sides of the bullet spinning it like a footbal , and this spinning

makes the bul et travel more straight and true to the target. As a result of these grooves, every bul et fired wil arrive at its target with markings etched into the bul et material from contact with the grooves in the barrel. These etched markings are cal striations, and they are uniquely identifiable back to the gun they were fired from.

319 Rod Gehl and Darryl Plecas, *Introduction to Criminal Investigation: Processes, Practices and Thinking* (January 2018) 161.

320 Rod Gehl and Darryl Plecas, *Introduction to Criminal Investigation: Processes, Practices and Thinking* (January 2018) 162.

321 Ibid.

For an investigator, these striations create an opportunity to match the bullet to the gun that fired it. Recovered bullets can be recovered and compared to test bullets fired from a suspected gun. When striations of a recovered bullet are compared to known samples fired from a suspected gun, a side-by-side microscopic technique is used to match striation markings. An expert bal istic examiner can sometimes identify and il ustrate matches in the striations to make a positive match.

2. Cartridge Chamber Markings322

When a cartridge is loaded into the gun chamber, the shiny brass casing comes into contact with the hard steel sides of the chamber. This can leave unique and identifiable scratch marks on the side of the casing. A cartridge casing ejected or unloaded from a weapon and left at the crime scene can sometimes be matched to the suspect gun by comparing these markings.

3. Firing Pin Comparison323

When the firing pin of any gun strikes the primer on the bottom of a cartridge, it leaves an indentation mark. This firing pin indentation can sometimes be matched to the firing pin of a suspect weapon. This requires microscopic examination to look for the unique characteristics of the firing

pin that are impressed into the soft metal of the primer when the firing contact occurs.

4. Ejector Mechanism Markings[324]

Methods for loading and unloading weapons have evolved considerably due to different gun designs. The simplest guns al ow the user to open the breech of the gun, exposing the cartridge chamber so that the cartridge can be inserted manual y There is no ejector mechanism for these guns, so there wil be no ejector marks left on the base of a cartridge when it is unloaded. In cases where a gun does have an ejector mechanism, these mechanisms leave very distinct and unique marks on the soft brass cartridge base. These markings can sometimes be compared and matched back to the ejector of a suspect weapon. With this broad variety of bal istic comparison techniques, an investigator has a significant number of tools that can be deployed and strategies that can be engaged to assist in matching a bullet to the gun that fired it.

Considering these tools, the cartridge casing left at the scene of a shooting can be as important as a bullet removed from the body of a shooting victim. Thus, an investigator needs to keep this in mind when seizing cartridge casings as evidence. Hence, great care needs to be exercised to:

1. Document the location where each individual casing was found;

2. Preserve each casing in a manner that does not degrade the possible markings that could enable a match to be made.

NOTE: The casings may get damaged if al the casings are placed in a common bag because the constant rubbing amongst the casings may obliterate the existing markings on them.

5. Trajectory Analysis[325]

322 Ibid.

323 Ibid.

324 Rod Gehl and Darryl Plecas, *Introduction to Criminal Investigation: Processes, Practices and Thinking* (January 2018) 162.

325 Ibid, 163.

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Another area of bal istic science in addition to the bal istic fingerprinting examinations, is trajectory analysis. The trajectory of a bul et is the path the bul et takes when it leaves the barrel of the gun to the point where it final y loses the propulsion energy of the gun powder and comes to rest.

The flight of a bullet can be very short, as in the case of a point blank shooting, i.e. where a victim is shot at a very close range, Or the victim may be distant where the target is one mile away or more.

When the bullet is traveling a longer distance, it travels that distance in an arched path as it is pulled towards the ground by gravity. When the bullet arrives at its destination, it wil have a distinct angle of entry towards the target.

This angle of entry can sometimes be calculated as trajectory to estimate the geographic location of the originating shot. In cases where a bul et passes through several objects, such as two walls of a house, the trajectory of the bul et can be used to determine where the shooter was located. In cases of drive-by shootings, for example, where several shots are fired, the pattern of trajectories can show if the shooter was moving and, if so, demonstrate the direction of travel.

XIV. FIREARM AND TOOL MARKS IDENTIFICATION326

Firearms Identification is one of the prominent disciplines of forensic science. Firearms Identification is actual y a form of tool marks identification that determines if a bul et, cartridge case, or other ammunition component was fired from a particular firearm.

XV. ACCIDENT RECONSTRUCTION – VEHICLE DYNAMICS327

When a vehicle is involved in a shooting incident the vehicle dynamics and motion must be accounted for during the reconstruction process. It may be beneficial to utilize an accident reconstruction expert to examine skid marks and vehicle damage to approximate the speed and direction of travel before, during, and after the shooting incident.

While accident reconstruction alone wil rarely answer al of the relevant issues, it is one of the many available methods or examinations that may be used to conduct a comprehensive shooting scene reconstruction.

7. PROCEDURAL CHALLENGES: EXAMPLES FROM CASE LAW

INTRODUCTION

This chapter sheds light on a number of procedural chal enges that may arise in relation to admissibility of forensic evidence in courts. These chal enges may hamper the admissibility of forensic evidence from initial stages of recovery to the loopholes in maintenance of the chain of custody. An analysis of the case law unveils that the most common chal enges that render forensic evidence inadmissible are procedural and administrative in nature. For example, a number of cases were unsuccessful in utilizing forensic evidence because there was an unexplained delay in handing over the recovered evidence to the forensic laboratory, a contradiction in terms of evidence recovered, and major loopholes in the chain of custody.

The fol owing case law are il ustrative examples of possible procedural deficiencies contextualized within the paradigm of specific terrorism offences.

326 PFSA Guideline. <http://pfsa.gop.pk/?page_id=37> .

327 supra note 99, pg23

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I. DELAY IN SENDING RECOVERED EVIDENCE TO THE FORENSIC SCIENCE LABORATORY

*Muhammad Wali Shah vs. The State*328

The weapon of offence had not been sent to the Forensic Science Laboratory for chemical analysis to ascertain whether it was stained with blood matching with the deceased or not. Prosecution failed to bring on record any cogent reason as to why such a vital piece of evidence was not sent to the Forensic Science Laboratory, which created a dent in the prosecution case. Recovery of weapons of offence, under these circumstances, became inconsequential.

Samander alias Qurban vs. The State[329]

The conviction of the petitioner under S. 7 of the ATA was set aside due to dents in the case of the prosecution. It was observed that there was a delay of twenty days in sending the crime weapons to the Forensic Science Laboratory despite the fact that the Laboratory was within the city. This was enough to establish that the recovery of crime weapons was not made from the possession of the accused/petitioner as was claimed by the prosecution.

Mustaqeem vs. Nawab Khan[330]

There was no documented chain of custody in this case. The empties recovered from the crime scene were sent to the Forensic Science Laboratory after a delay of eleven days and there was no documentation of where they had been before they were dispatched. In light of this, a positive report of the Forensic Science Laboratory that connected the accused to the crime was discredited and considered inadmissible.

Muhammad Nawaz vs. The State[331]

A conviction cannot be based on a positive report by the FSL only. Insofar as a positive report of the Forensic Science Laboratory is concerned, the same is useless for the prosecution because admittedly the empties were sent to the said Laboratory with the delay of twenty days after the occurrence.

Nawad alias Nawabi vs. The State[332]

The Court found that the report of Bal istic Expert in the case in hand is highly defective, inasmuch as: i.

it is not on the prescribed form;

i . it does not show as to when the crime weapon was received in the Office;

i i. it does not contain reasons for the opinion.

Although the report submitted by the firearm expert appointed by Government can be received in evidence without cal ing the expert as a witness and it can be used as evidence in any trial, yet, so far as the rules governing the credibility or the value of the opinion of an Expert is concerned, section 510, Cr.P.C. does not make any departure from the existing state of law. It is well-settled that a report of a bal istic expert, can be fal ible and is not immune from judicial scrutiny. The opinion of an expert is received in evidence because it either confirms or falsifies the other evidence on record. Since this case hinges on the evidentiary value of the corroboratory evidence, there was a greater need for obtaining the reasons of the bal istic expert in support of his opinion expressed in the bal istic expert report.

The prosecution has not produced a firearm expert to support his opinion. The Trial Court did not cal the expert as a witness to obtain reasons for his opinion or to provide the opportunity to the accused to cross-examine him. The 328 *Muhammad Wali Shah vs. The State*, 2017 PCrLJ 779

329 *Samander alias Qurban vs. The State*, 2017 MLD 539

330 *Mustaqeem vs. Nawab Khan*, 2016 YLR 905

331 *Muhammad Nawaz vs. The State*, 2009 PCrLJ 506

332 *Nawad alias Nawabi vs. The* State, 1985 PCrLJ 2217

learned trial Court should have summoned the expert as a witness under proviso to section 510, Cr. P. C. as it was very much necessary in the interest of justice to examine him for the purpose of obtaining reasons for his opinion.

*Hashim Vs. The State*333

The forensic evidence recovered was rendered inadmissible by the Court. It was found that there was an unexplained delay of twenty-one days in sending the weapons to the Forensic Science Laboratory. The hand grenades recovered from the crime scene were sent to the Forensic Science Laboratory after a delay of nine days. Moreover, it was also observed that the mashirnama written at the time of arrest did not state the numbers engraved on weapons.

Whereas, the report prepared by the Forensic Science Laboratory contained information regarding the numbers of each weapon. The delay in sending over recovered evidence to the Forensic Science Laboratory paired with the discrepancies between the mashirnama and the report prepared by the Forensic Science Laboratory invalidated the prosecution’s stance.

Afaq Ahmed Vs. The State[334]

Forensic evidence recovered by the prosecution was rendered inadmissible by the Court. It was observed that empties recovered from the crime scene were not sent for bal istic examination immediately but after an unexplained delay of 7 days with no proof of safe custody along with the firearm which had apparently been recovered from the accused at about that time when he was al egedly arrested from a bus stop 7 days after the incident. Since there was a delay in sending firearms and empties recovered from the crime scene to the Forensic Science Laboratory, the doubts regarding the prosecution's case grew. Moreover, the firearms and forensics were sent to the Forensic Science Laboratory on different days even though they were col ected from the crime scene on the same day.

Unreasonable delay in sending over recovered items to the Forensic laboratory without any proof of safe custody makes prosecution’s narrative unreliable.

Dilawar and Another Vs The State[335]

The Court decided that the bal istic expert report is not reliable because it was sent after a delay of about 24 days and the recovered empties and pistol were both sent together. The investigation is faulty as the statements of prosecution witnesses under Section 161 were recorded after 11 days of the

incident. Further statement of complainant was recorded after identification. Delay and failure to fol ow procedure makes the prosecution's stance invalid.

Saifullah alias Saifee vs. The State[336]

A conviction under Section 7 of the ATA was set aside by the High Court on the grounds that there was a three-day delay in sending the recovered pistols to the Forensic Science Laboratory.

II. UNRELIABLE CHAIN OF CUSTODY

State vs. Sadam[337]

There was no identifiable chain of custody because of which the defendant was acquitted of a charge under Section 5 of the ATA. The judgment was appealed and it was held that because the live rounds from the firearms were sent to the firearms expert after a delay of three days and received by the Forensic Science Laboratory after a further 333 *Hashim vs. The State*, 2019 Y L R 552 [Sindh]

334 *Afaq Ahmed vs. The State*, 2020 Y L R 676 [Sindh]

335 *Dilawar and Another Vs. The State*, 2020 P Cr. L J 619 [Sindh (Hyderabad Bench)]

336 *Saiful ah alias Saifee vs. The State***,** 2017 YLRN 182

337 *State vs. Sadam,* 2016 PCrLJ 1815

delay of nine days, without any explanation, they lost their evidentiary value. There was nothing on record that showed where the live rounds were before they were sent to the expert.

Moreover, the recovered explosive material was examined by the Bomb Disposal Unit after two months of the incident and the expert, who examined

the explosive material was never examined by the prosecution. This created a serious dent in the case of the prosecution which led to an acquittal.

Rao Naeem Alias Goga Vs. The State[338]

The Court highlighted the dents in the prosecution's case. Prosecution had failed to establish safe custody of the recovered Awan Bomb and 9 MM Pistol at Police Station and safe transmission to the expert. Moreover, the Awan Bomb was not sent to the Forensic Science Laboratory. Simple recovery of weapons could not be considered as a corroborative piece of evidence until it was supported by a positive report of the forensic science laboratory.

Mohammad Hayat and 3 Others Vs. The State[339]

Pieces of evidence connecting the appellants with the crime was the recovery of K. Ks and empties from the place of wardhat, but strange enough. K. Ks and empties were not sent to the Expert for Bal istic report. Escape of the remaining accused at the time of the first episode when the police party was in large numbers also raises serious doubt in the prosecution case. When the items recovered from the crime scene are never sent to the Forensic laboratory and the narrative produced by prosecution is doubtful, the court is likely to not side with the prosecution.

This is because a safe chain of custody could not be established during the time that al eged weapons were in prosecution's custody.

III. CHALLENGES OF EVIDENCE RECOVERED FROM MODERN DEVICES

Azeem Khan vs. Mujahid Khan[340]

The cel phone data that was col ected in this case could not advance the case of the prosecution for the fol owing reasons:

i.

There was no competent witness produced by the prosecution, who could prove the cal data; i . No voice record transcripts had been brought on

record;

i i. There was no evidence of where the cal s were being made from;

iv. There was no conclusive proof that the cel phone was owned by the accused as there was nothing on record to show that the SIM al otted was in the name of the accused.

In light of the above reasons, it was held that the cel phone data was absolutely inconclusive and of no benefit to the prosecution as it could not connect the accused to the crime in any manner.

Akhtar Ali Ghowada Vs. The State[341]

The court observed that the evidence obtained from modern devices must corroborate with other evidence col ected and a proper chain of custody must be formed for the evidence to be admissible. Evidence procured through modern devices like CCTV has been made admissible under Article 164 of the Qanun-e-Shahadat Order, 1984 but at the bail tentative stage, an assessment of the entire evidence was made by the Court. CCTV evidence wasbe taken into consideration by the trial Court in accordance with law. However, the name of the applicant/accused and his 338 *Rao Naeem Alias Goga vs. The State*, 2019 M L D 1659 [Sindh]

339 *Mohammad Hayat and 3 Others Vs. The State*, 2018 P Cr. L J Note 61 [Sindh (Sukkur Bench]

340 *Azeem Khan vs. Mujahid Khan*, 2016 SCMR 274

341 *Akhtar Ali Ghowada Vs. The State*, 2015 M L D 1661 [Sindh]

description were not mentioned in the FIR as well as in 161, Cr.P.C. statement of prosecution witness. This cast a shadow of doubt on prosecution’s ability to identify the said person on CCTV footage when no description was provided. The above contentions raise reasonable grounds to believe that the accused is not guilty of the offense he is being charged with.

Asfandyar and Another Vs. Kamran and Another[342]

The court maintained that evidence through modern devices is admissible in court but the genuineness of such evidence must be exhaustively determined. The High Court restricted the admissibility only to the extent of Article 79 of the Order, 1984 whereas there are certain other provisions/articles in the Order, 1984 for proving the documents which are procured through modern devices and techniques. Mere producing any footage of C.C.T.V. as a piece of evidence in the Court is not sufficient to be relied upon unless and until the same is proved to be genuine.

In order to prove the genuineness of such footage it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the C.C.T.V. system.

IV. CONTRADICTION OF EVIDENCE

Zeeshan Ali Vs. The State[343]

It was observed that contradictions in the FIR report and the one prepared by Forensic Science Laboratory cast shadows on the prosecution's case. It was brought to the court's attention that it is mentioned in the FIR that the al eged weapon al egedly recovered from the appel ant was without number, but the Forensic Science Laboratory report mentioned that the al eged weapon was a rubbed number. No official from the Forensic Division had been examined in this case. The court decided “therefore, under the circumstances, no reliance could safely be placed on the FSL report for conviction of the appel ant on the basis of contradictory evidence.”

Muhammad Imran Vs. The State[344]

This case established the fact that contradictions between eye-witness, FIR and Forensic Science Laboratory report invalidate the prosecution’s case. In the mashirnama of arrest and recovery, weapons with different numbers were entered whereas the Forensic Science Laboratory prepared a report stating weapons with different numbers than those mentioned in the mashirnama. Moreover, the prosecution witness had described the al eged weapon as it was stated in the mashirnama. Apart from that, as per record, the al eged

weapon al egedly recovered from the appellant was given to the Office of the Assistant Inspector General of Police, Forensic Division, Sindh, Karachi, after the delay of about five (5) days for which no explanation has been furnished by the prosecution

*Abdul Rehman Vs. The State*345

The weapon recovered from the appellant was received by the Office of the Assistant Inspector General of Police, Forensic Division, Sindh, Karachi after a delay of 2 days. This delay was unexplained. The weapon was not entered in record by the Police station during this time. No official from the Forensic Division has been examined in this case.

Furthermore, in the mashirnama of arrest and recovery it was stated that a 30 bore pistol along with a magazine containing two live bul ets, body of which, PAK2000 AAR Pes CAL-30 was recovered. However, the FSL report mentioned the description of the al eged weapon as one .30 bore pistol No.PK2000 with magazine marked/signed 342 *Asfandyar and Another Vs. Kamran and Another*, 2016 S C M R 2084

343 *Zeeshan Ali Vs. The State*, 2019 P Cr. L J Note 126 [Sindh]

344 *Muhammad Imran Vs. The State*, 2019 M L D 685 [Sindh]

345 *Abdul Rehman Vs. The State*, 2019 P Cr. L J 875 [Sindh]

and two .30 bore live cartridges, which is an incomplete number and hence different from what was stated in the mashirnama. It was observed that contradictions between the mashirnama and Forensic Science Laboratory report rendered the prosecution case unreliable.

CHAPTER 7: ARREST, REMAND AND BAIL

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INTRODUCTION

Arrests constitute one of the most important duties of a police officer and the same is carried out either to prevent the commission of an offence or to arrest persons who are suspected of having committed an offence or where a person is likely to abscond or fail to appear during investigation. Accordingly, it is important for police officers to be familiar with the legal requirements of making arrests including the limits of using force as a means to arrest.

Particularly, in respect to the latter, the powers of arrest cannot be exercised arbitrarily and must be backed by sufficient legal grounds. Once an arrest is made by a police officer, the same is to be reported to a magistrate having jurisdiction and to superior officers in a proper format. This is essential because a police officer can be held accountable for misuse of authority by making arrests without justification or for not fol owing the required procedures set out for arrest.

1. THE POWER TO ARREST

The term arrest has not been defined by the Cr.P.C, however, a formal arrest authorizes the detention of an individual for a period of twenty-four hours in which the investigation is conducted. The power to arrest an accused is an ultimate step in the process of investigation. The investigating officer, after col ecting evidence, may arrest the accused. Chapter XVI of the Police Rules provide details about the arrest and the certificate of identification of an accused that is to be added in a case file. As soon as a person is arrested or detained, the constitutional guarantees of presenting him in a court of law within twenty-four hours and his right to counsel are set in motion. In cases involving cognizable offences the police have the power to arrest the accused persons without any warrant.

Furthermore, Police officers are also empowered to arrest in connection with public order offences that are considered terrorism-adjacent offences with the aim to preserve public safety. Under the West Pakistan Maintenance of Public Order Ordinance, 1960, the Government may order in writing for a police officer to arrest and detain a suspect in order to prevent a person from acting in a manner prejudicial to public safety or to the maintenance of public order. A government servant may also refer a matter to the Government for orders if they believe an individual is acting in such a manner prejudicial to the law. Final y, the police possess the exceptional power to arrest for the prevention of a cognizable offence under section 151 without the need for a warrant or orders from a Magistrate. Section 151 is deemed an emergency arrest provision available to a police officer where no other means of preventing the commission of the offence exist.

2. WHEN TO ARREST

Arrest from Crime Scene

Section 47 of the Cr.P.C. also al ows entry into and search of any place where the individual to be arrested has entered; and section 49 al ows the police officer to break a door or window in order to effect entry, but only after he has notified those residing that he is demanding admission and such entry has been refused. This is particularly so where there is a *zanana* (a private portion of a house where women reside) which is being broken into as it gives the women time to withdraw from the place of entry. 346

The police have authority to enter an establishment to make an arrest through windows and doorways, after declaring their intention to do so as to give women and children time to clear away from the entrance point.

346 Section 48, Cr.P.C.

Arrest How Made (s. 46 Cr.P.C.)

[See Police Rules 1934: 26.1-26.8,

26.13, 26.16-26.32]

Search of place entered by

Procedure where' ingress not

Power to break open doors and

person sought to be arrested

obtainable

windows for purposes of

liberation

(s. 47 Cr.P.C.)

(s. 48 Cr.P.C.)

(s. 49 Cr.P.C.)

Enough evidence has been brought on record to al ow arrest

The investigation process for a cognizable offence is initiated once the police registers an First Information Report (FIR) under section 154 of the Code of Criminal Procedure (Cr.P.C.). An FIR can be lodged by anyone, including a victim, a police official, a counselor, a community head/watchman or a private citizen, by informing the police by any means. The police are then empowered under section 156 of the Cr.P.C. to conduct an investigation.

An investigation is defined as the col ection of evidence conducted by a police officer or any authorized person. 347

The police have the power to arrest a suspect during the course of an investigation; however, this power is permissive and not obligatory. 348 The police are only bound to arrest a suspect if it is likely that not doing so would result in the suspect's escape from justice or an inconvenient delay. 349

Domestic and international case law has attempted to define the rather ambiguous phrase 'reasonable suspicion'. It was held in *Manthar Ali v/s S.H.O* that reasonable suspicion (as used in the Cr. P. C) does not mean a vague surmise or inference but a bona fide belief that an offence had been committed or was about to be committed. 350 This belief had to be based on some definitive averments or al egations, which create the basis for suspicion of the person to be arrested.

When to delay arrest

If it is necessary to delay the arrest of the accused, its process has been outlined under section 26.2 of the police rules. Rules 26.2 and 26.9 also provide further guidelines to the police officers involved in investigation of crimes requiring them not to unnecessarily interfere with the liberty of suspects "until the investigation is sufficiently complete" and "the facts justify arrest". Furthermore, according to Rule 26.1, the facts justifying an immediate arrest may include a possibility of the suspect escaping from

justice or inconvenient delay likely to result from the police failing to arrest.” 351

3. PLANNING AN ARREST

347 Section 4 (l) Cr. P. C

348 Rule 26.1 Punjab Police Rules, 1934 read with section 54 of the Cr. P. C.

349 Ibid

350 Manthar Ali v. S.H.O., 2013 PCrLJ 553 [Karachi]

351 *Mst. Sughran Bibi v. The State*, Human Rights Case No. 10842-P of 2018, para no 21

As soon as a person is arrested or detained, constitution guarantees to present him/her in a court of law within twenty-four hours and guarantees his/her right to counsel are set in motion. Therefore, experienced investigation officers plan the arrest and may make tactical choices ahead of the arrest. For instance, in order to ensure the safety and security of the general public, the arrest could take place in a location the accused is not familiar with. This wil ensure that the accused, particularly if violent or armed, wil not benefit from a ‘ground advantage’ and avoid unnecessary risks for the police. The investigation officers wil also conduct a security assessment as part of planning the arrest, which wil involve consideration of the fol owing:

•

Identifying when a suspect is in a given place in order to make the arrest; and ensuring al officers have a detailed description of the suspect (identification could be in the form of a recent photograph and a description should include whether the suspect has a propensity towards violence).

•

If the suspect has to be arrested from a premises, then the number of exits at the premises should be noted to ensure the suspect does not leave using any one of them. Obtaining the site plan of the premises, if possible, can be very helpful for this.

•

Assess the suspect’s profile and whether he/she is likely to have access to weapons (including the type of weapon) or the level of threat posed general y, and take al these factors into account when formulating a plan.

•

Identifying whether the suspect has access to a vehicle that he could use to try to escape in case of awareness of the arrest.

•

Alerting police officers to the need to preserve any vehicle at a crime scene after the arrest is conducted for evidence during the investigation phase.

•

If there is more than one suspect to be arrested for which different arrest teams may be required;

•

If the suspects are to be held at the same or different police stations.

•

If officers are required to guard the scene after the arrest, if necessary, to manage other people likely to be present during the arrest; this is particularly important as some of these individuals may potential y be witnesses in the case.

•

If specialist equipment to force entry to premises is required in case entry is refused.

•

Whether the means for transporting the suspect to the police station is available.

•

Whether an ‘appropriate adult’ is available for juvenile or otherwise vulnerable suspects.

•

Whether video-recording equipment for arrest and search is useful.

4. PROCESS OF MAKING AN ARREST

A police officer pursuing a suspect for arrest can pursue the suspect in any place in Pakistan. 352 Section 46 of the Cr.P.C. stipulates that an arrest requires that the police officer is to touch or confine the body to make the arrest unless a person submits by words or action. However:

1. Force must be proportional to what is necessary in order to make the arrest.

2. Use of force is contingent upon the conduct of the person being arrested.

3. Hand cuffs/chains are means of restraint to effect arrest.

More specifical y, Section 54 Cr. P.C authorizes a police officer to arrest without warrant.

1. Any person who has been concerned in any cognizable offence, or against whom a complaint has been made or credible information has been received, or suspicion exists, of his having been concerned.

352 Section 58, Cr.P.C.

2. Any person in possession of any implement of house breaking.

3. Any person who is a proclaimed offender.

4. Any person in whose possession stolen property may be found or reasonably suspected that such person has committed an offence with reference to such a thing.

5. Any person who obstructs a police officer in his duties.

6. Any person who has deserted from the armed forces of Pakistan.

7. Any person against whom there is reasonable suspicion of committing an offence outside Pakistan which if committed in Pakistan would be deemed to be an offence.

8. Any released convicted person committing a breach of any rule made under s. 565(3) of the Cr.P.C.

9. Any person for whose arrest a requisition has been received from another police-officer.

The fol owing table lays out, a comprehensive but non-exhaustive, list of the additional legal provisions that are relevant in the context of arrest:

•

No unnecessary restraint (s. 50 Cr.P.C.)

•

Search of arrested persons (s. 51 Cr.P.C.) [See Police Rules 1934: 26.3]

•

Mode of searching woman (s. 52 Cr.P.C.) [See Police Rules 1934:26.18A]

•

Power to seize offensive weapons (s. 53 Cr.P.C.)

•

Form of warrant of arrest (s.75 Cr.P.C.) [See Schedule V(II) of Cr.P.C.]

•

Notification of substance of warrant (s.80 Cr.P.C.)

•

Person arrested to be brought before court without delay (s.81 Cr.P.C.)

•

Where warrant may be executed (s.82 Cr.P.C.)

•

Warrant forwarded for execution outside jurisdiction (s.83 Cr.P.C.)

•

Warrant directed to police officer for execution outside jurisdiction (s.84 Cr.P.C.)

•

Procedure on arrest of person against whom warrant issued (s.85 Cr.P.C.)

•

Procedure by Magistrate before whom person arrested is brought (s.86 Cr.P.C.)

•

Proclamation for person absconding (s.87 Cr.P.C.)

- Attachment of property of person absconding (s.88 Cr.P.C.)
- Restoration of attached property (s.89 Cr.P.C.)
- Issue of warrant in lieu of or in addition to summons (s.90 Cr.P.C.)
- Power to take bond for appearance (s.91 Cr.P.C.)
- Arrest by breach of bond for appearance (s.92 Cr.P.C.)
- Arrest or prevent such offences (s.151 Cr.P.C.)
- Procedure when police-officer deputes subordinate to arrest without warrant (s. 56 Cr.P.C.)
- Refusal to give name and residence (s. 57 Cr.P.C.)
- Pursuit of offenders into other jurisdictions (s. 58 Cr.P.C.)
- Arrest by private persons and procedure on such arrest (s. 59 Cr.P.C.)

•

Person arrested to be taken before Magistrate or officer in charge of police-station (s. 60 Cr.P.C.)

•

Person arrested not be detained more than twenty four hours (s. 61 Cr.P.C.) [See Police Rules 1934: 26.26]

•

Police to report apprehensions (s. 62 Cr.P.C.)

•

Discharge of person apprehended (s. 63 Cr.P.C.)

•

Offence committed in Magistrate's presence (s. 64 Cr.P.C.)

•

Arrest by or in presence of Magistrate (s. 65 Cr.P.C.)

•

Power, on escape, to pursue and retake (s.66 Cr.P.C.)

•

Provisions of escape, to sections 47, 48 and 49 to apply to arrest under section 66 (s.67 Cr.P.C.)

•

Form of warrant of arrest (s.75(1) Cr.P.C.)

•

Continuance of warrant of arrest (s.75(2) Cr.P.C.)

•

Preventive action under ss. 151 and 107 (Security for keeping the peace in other cases of the Cr.P.C. (Rule 23.32 of the Police Rules 1934)

•

Bail and Cognizance [Rule 26.22 of the Police Rules 1934]

•

Conditions in which use of handcuffs may be dispensed with [Rule 26.23 of the Police Rules 1934]

5. SEARCH OF ACCUSED PERSONS

At the time of the arrest, the arrestee is also searched. During the search, his/her personal belongings are taken from them and kept in safe custody. 353 Women subjects are to be searched by women. 354 After arrest, the person is to be searched before transfer to the police mobile or any other place. Moreover, the inventory of belongings recovered from him/her should be prepared in presence of witnesses. Final y, every prisoner in police custody shal be searched both on first admission to lock-up and on every subsequent admission to lock-up.

6. RIGHTS OF THE ACCUSED AT THE TIME OF THE ARREST

Informing the Accused that he/she is under arrest

As per Article 10(1) of the Constitution of Pakistan, 1973, the arrested person must be informed that they have been arrested, even if this is obvious. In light of this, there are three things that must be conveyed to the person being arrested at the time of arrest:

•

That they are under arrest and have been deprived of their liberty

•

The nature of the offence (for example if they are arrested for terrorism-related offences)

•

Where and when the offence was committed

It should also be noted that the police officer should avoid using vague or technical language, however, it is not necessary to disclose specific details that might undermine the investigative process.

Arrest of Specific Persons (Specific Categories)

Vagabonds/habitual robbers

Any officer in charge of a police station may arrest or cause to be arrested without warrant: 1. Any person found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions to commit a cognizable offence.

2. Any person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself.

3. Any person who is by repute a habitual robber, house breaker or thief or habitual receiver of stolen property or habitually commits extortions or attempts to put persons in fear of injury.

Public servants

Whenever a public servant is required to be arrested, his superior officer or departmental head should always be informed. Preferably before arrest, otherwise:

1. Immediately after arrest

353 Rule 26.3, Police Rules 1934

354 Rule 26.3, Police Rules 1934

197

2. Where arrest is to be made from official premises i.e. office, the superior officer should be informed and taken into confidence prior to arrest. 355

Arrest of Women

1. Arrest of women whether without warrant or with a warrant, bailable or non-bailable shal be carried out by police officer not below the rank of Assistant Sub Inspector.

2. Head Constable may arrest in presence of a male relative or vil age or Town official.

3. When bail is admissible, women should not be detained longer than is necessary for the production of bond or sureties.

4. Where lady police officers are available, they should be present during arrest, escort or detention.

5. Rule 26.18, sub-rule 2 of the Police Rules 1934 states that women are not to be lodged in police lockups even for a night ‘except in unavoidable circumstances’ wherein a gazetted officer is to take responsibility for ensuring decent custody of the accused

6. No application for remand to police custody shal be made without special order of a gazetted police officer who wil subsequently ensure that al necessary measures as per the Police Rules are taken. 356 (i.e. an officer whose name is published in the official gazette by the Government and are BPS 17-22) 7. They are to be immediately produced in front of a Magistrate to obtain judicial remand and to be handed over.

8. Women under police custody should be detained in women police station where available. In any case lady police officer must be deputed with the normal guard. 357

9. Body search of women after arrest must be carried out by a lady police officer. In case, lady police officer is not available, services of another woman from the locality should be acquired.

Sick or wounded persons

1. Wounded or seriously il persons in non-bailable offences or those who are unable to furnish bail in bailable offences are to be sent to the nearest hospitals.

2. Police are to take measures to ensure their safe custody.

3. Provided that such person cannot be moved or shifted without posing a risk to their life, the magistrate shal be asked to grant remand and may record the statement where that person is situated. 358

Arrest of Children

1. The Juvenile Justice System Act, 2018 requires the police officer not to handcuff a child or put him in fetters unless there is reasonable apprehension that the child might escape. In the event of such a reasonable apprehension, the police officer must ensure that the juvenile is more than sixteen years of age and is involved in a heinous crime or was previously convicted for an offence punishable with life imprisonment.

If this is to occur, the reasons for the same must be recorded in writing. 359 Furthermore, a police officer must use only minimum force when arresting or dealing with children. Once a decision to arrest is taken, the police officer must inform the minor of the reasons for arrest and the nature of al egations.

2. The Guardian of the child must be informed of the arrest. 360

3. Moreover, the police officer must contact the nearest probation officer so that he can attend to the child and perform his duties as a probation officer.

355 Police Rule 26.13

356 Rule 26.18-A, Police Rules 1934

357 Police Rule 26.18A

358 Police Rule 26.19

359 Section 16 Juvenile Justice System Act, 2018

360 Section 5(a) Juvenile Justice System Act, 2018

4. No juvenile is to be arrested under laws that deal with preventive detention or pertain to Chapter VI I of the Code.

5. Likewise, in accordance with section 6 of the Act, a child may be denied bail if there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger.

Arrest of Foreigners

Under Section 3(2)(g) of the Foreigners Act 1946, a foreigner can be arrested and detained in the interest of the security of Pakistan for up to two months, and subsequently be deported. Any period of internment longer than two months requires approval by a Board. In *Riaz v/s. Superintendent*, Central Jail, Lahore (2011 YLR 418), the court held that there must be 'sufficient material on the record to demonstrate that stay of the said person would be injurious to the national interest of the country' without indicating what sufficient material is. Section 14 B of the Foreigners Act al ows the federal government to deport any person whose stay has been determined il egal, provided his presence is not required in connection with any other case. Under Section 14 C of the Foreigners Act, a foreigner who has been convicted and sentenced for il egal stay in Pakistan shal not immediately be released on the expiry of the sentence. He shal continue to remain in custody til arrangements for his deportation has been finalised, and this period must not exceed three months.

Additional y, Pakistan is a party to the Vienna Convention on Consular Relations, 1963 (VCCR) which has been transposed into Pakistan's domestic legislation through the Diplomatic and Consular Privileges Act, 1972. 361

Article 36 of this Convention requires the arresting authorities within Pakistan to ensure the fol owing: Ensuring that the right to free communication between the arrested foreigner and his home country is not impeded.

Art. 36(1)(a) of the VCCR requires that the consular officers shal be free to communicate with the consular officers of their State and vice versa. Moreover, Pakistan has also ratified the United Nation's Convention against torture (UN-CAT) that lays out the rights of foreign prisoners under detention (Article 2, 3, 6, 7 and 9). Article 6 of the UNCAT

sets forth guidelines for the arrest and detention of foreign prisoners. It allows a state to take a person into custody who is al eged to have committed an offense. Upon making the arrest or bringing the person into custody, he must be facilitated in communicating with a representative of his state or of the state where he usual y resides.

Obligation to inform arrested foreigner of their right to Consular Access

Art. 36(1)(b) of the VCCR requires that the arrested and detained foreigners must be informed of their right to have their consulate notified of their detention and their right to communicate with their Consulate. According to Principle 14 of Body of Principles for the Protection of Al Persons under Any Form of Detention or Imprisonment, which was adopted by General Assembly resolution 43/173 of 9 in December 1988, a prisoner who does not adequately understand or speak the language used by the authorities is entitled to receive relevant information promptly in a language which he understands.

Upon request of arrested Foreigner, notifying Consular Officials of his/her home Country without delay Art. 36(1)(b) of the VCCR requires that upon request of the arrested foreigner, the authorities of the receiving State (Pakistan) are to notify the Consular office of his State without delay.

Consular Access to Arrested Foreigner

361 Although, Article 36 of the VCCR is not a part of the Second Schedule of the Diplomatic and Consular Privileges Act 1972, it is stil binding on

Pakistan by virtue of Pakistan’s ratification of the Convention.

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Art. 36(1)(c) of the VCCR requires that the Consulates also have a right to communicate, correspond, and visit their detained nationals and arrange for their legal representation and provide appropriate assistance.

7. DOCUMENTATION RELATING TO ARREST

The arrest must be recorded in the case diary of the case maintained by the Investigation Officer as well as in the Daily Diary of the Police Station. Moreover, all complainants, persons arrested, and offences charged against them, the weapons or property taken from them and the name of witnesses to be examined, should be recorded.

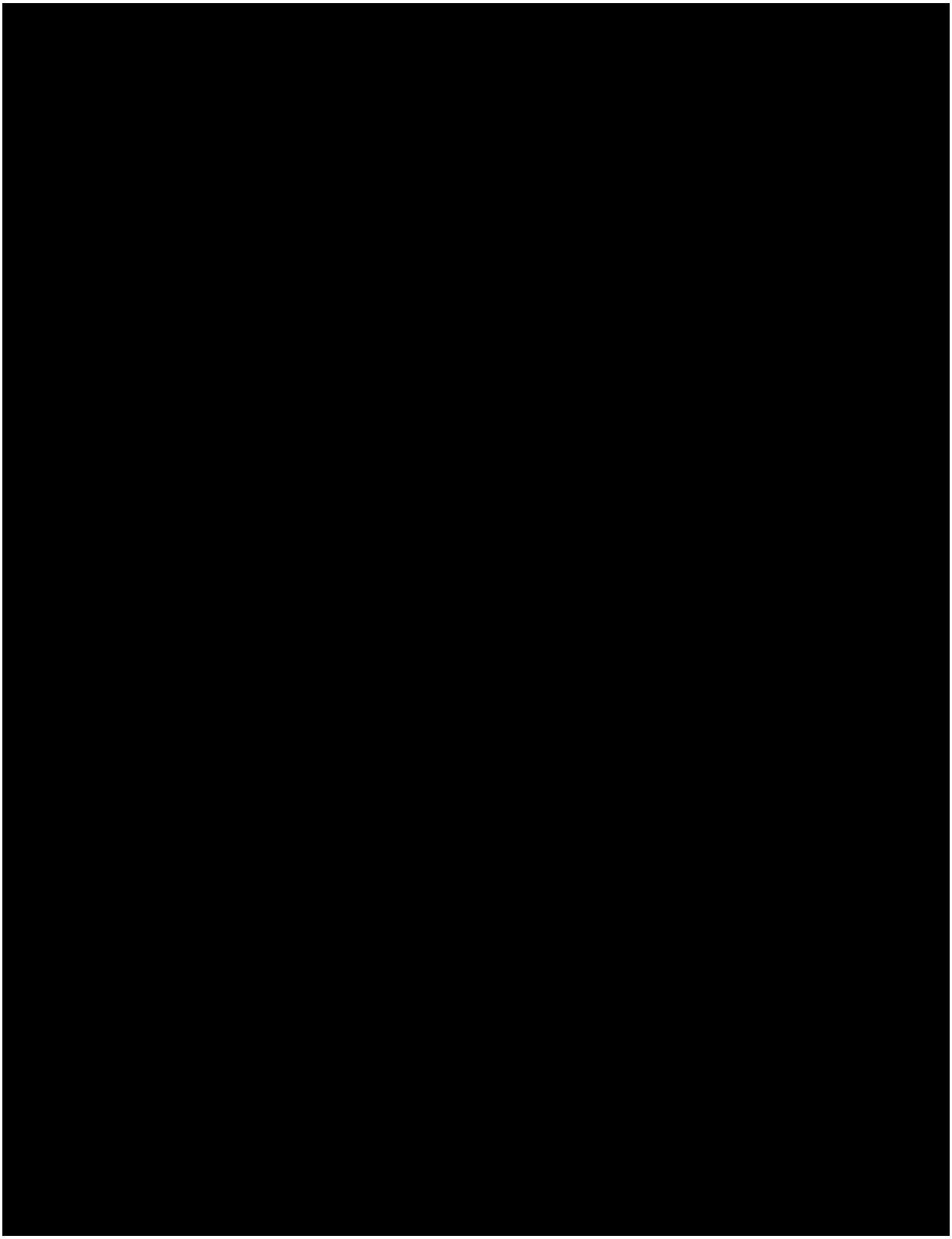
The maintenance of a complete and regularly updated Daily Diary is an important duty, as the District and Sessions Judge may cal for and inspect such a Diary at any time. Making a false entry in the Daily Diary (in that the police officer knows the entry to be untrue) is a serious offence punishable with dismissal from service. 362 Also, where

‘wanted’ notices have been issued for an arrested offender or where an important arrest has taken place, the arrest must be published in the Criminal Intel igence Gazette (although in reality this is seldom published). 363

The fol owing cards must be completed as per the Police Rules Chapter 26 when recording the arrest: 362 Rule 22.50, Police Rules 1934

363 Rule 11.52 (c), Police Rules 1934

200



FORM No. 21.35(2)(b)

CRIMINAL INDEX CARD

NAME		*Aliases* or Nicknames					No.
Parentage		Residence					Caste occupation
	HEIGHT						
Date of birth	Ft. In	Build	Eyes	Hair	Complexion	Hair on face	Descriptive Index No. ___ Deformity Index No. ___

Marks and peculiarities _____

ASSOCIATES

1. _____ C.I. No. _____
2. _____ C.I. No. _____
3. _____ C.I. No. _____
4. _____ C.I. No. _____
5. _____ C.I. No. _____
6. _____ C.I. No. _____
7. _____ C.I. No. _____
8. _____ C.I. No. _____

P.R. No. _____ Photo Vol. _____ Page _____

(Reverse)

Medhod

CRIMINAL HISTORY

Signature

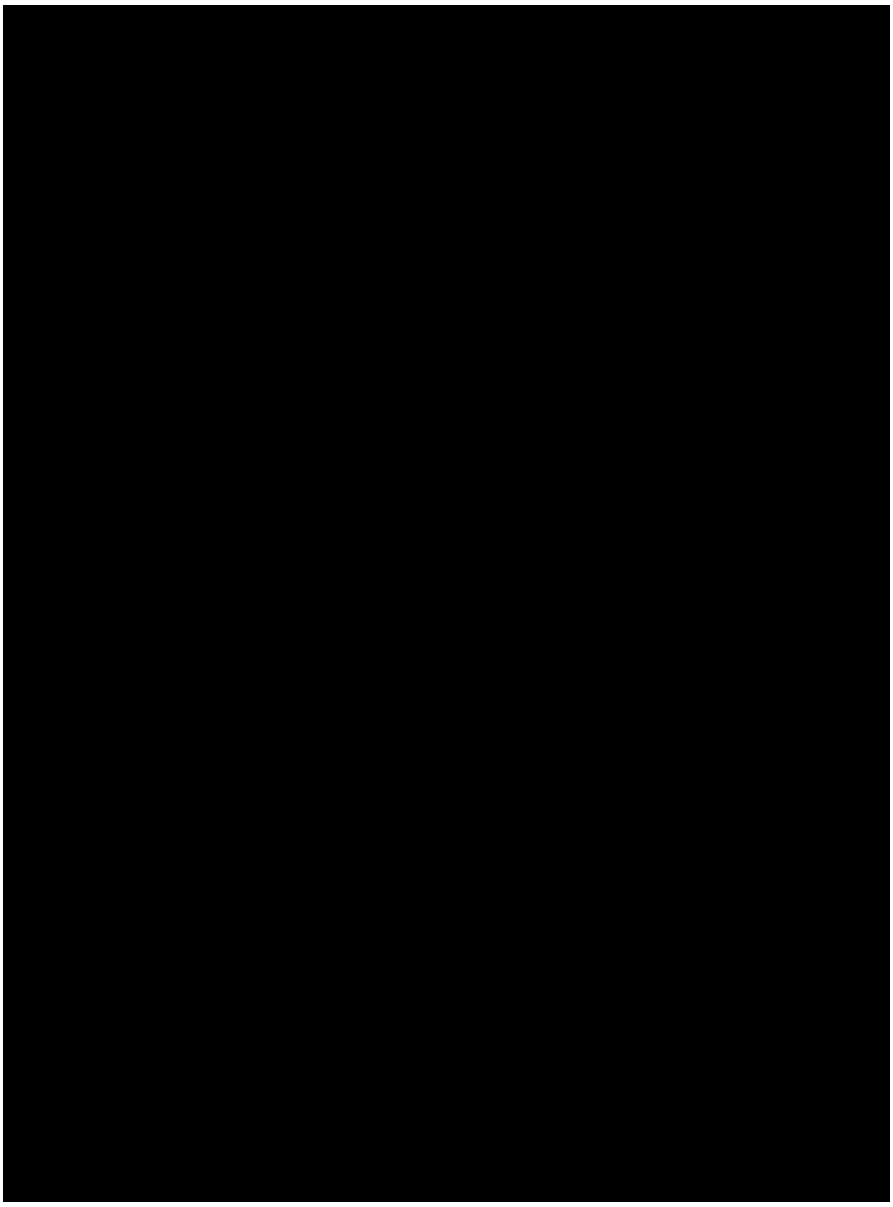
FORM No. 21.35(2)(a)

CASE INDEX CARD

Head _____ Sub-head _____ Index No. _____ Police Stn. ____ F.I.R. No. _____ Date _____ Law and Sec. _____

Facts in brief particularly those showing method..

(*Reverse*)	(*Reference*)
Name and *aliase* _____	Name Index Card No. _____
Parentage and address _____	Photo album No. page _____
Caste and trade or occupation _____	P.R. No. _____
Description _____	Index Card No. _____
Deformaties and Peculiarities _____	Index Card No. _____



Dated:

Time:

At the scene.

Memo of Arrest

of Suspect _____.

I, SIP *(name of arresting officer)* posted at P.S_____ in connection with investigation of Case FIR No. _____ u/s _____ P.S_____ on the pointation/identification of eye witness (1) Mr. _____ (2)_____ after having informed him of the nature of crime, arrested accused *(name of accused)*

From: *(name of place)*, one wrist watch, rupees seven hundred and a mobile phone was recovered from body search.

Memo of arrest was prepared on the scene and read over to the witnesses who admitted it to be correct and signed.

Witness No.1:_____s/o_____

r/o_____

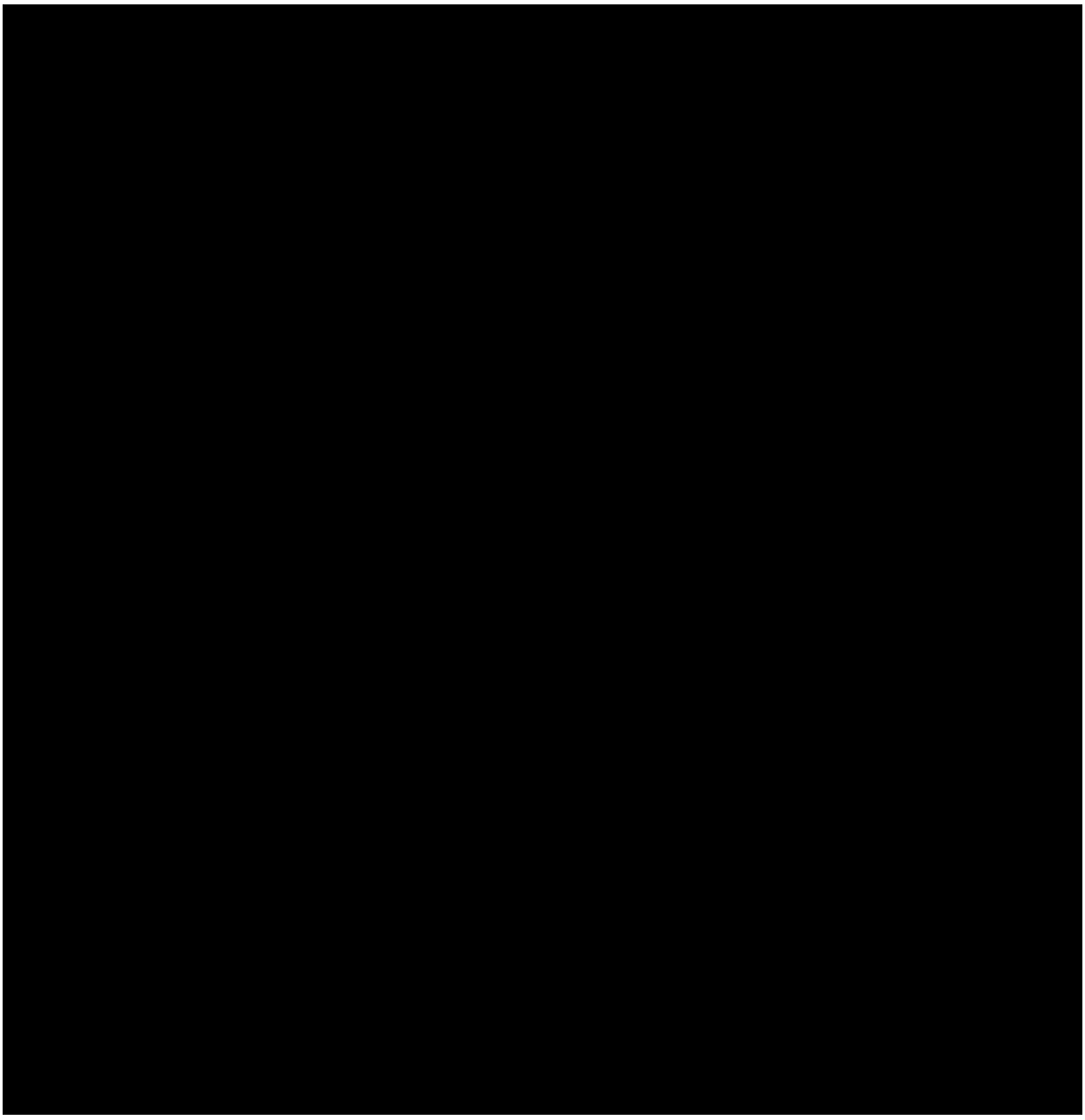
Witness No.1:_____s/o_____

r/o_____

SIP _____

of PS _____

Signature:_____



FORM No. 21.35(2)(c)

No. _____

DESCRIPTIVE INDEX CARD

(To be indexed by height and where this is identical by age and so on)

Height _____ Date of birth _____

Build _____ Eyes _____

Hair on head _____ Hair on face _____

Complexion _____

Identification marks (scars, etc.)_____

Gait, speech and manner _____ Deformity Card No. (if any) _____

Dress _____

Deformities _____

Name _____

Parentage _____

Criminal Index Card No. _____

Deformity Index Card No. _____

In addition, a memo of arrest is to be prepared in accordance with the fol owing format: 202

FORM NO. 26.8(2)

Police Station:_____ District: _____

REPORT OF ARREST

(Under Section 62, Criminal Procedure Code)

Has the honour to report that _____ son of _____ Caste _____ resident of _____, has been apprehended (or detained as the case may be) this day at _____ O'clock as he is accused of _____ _____

Dated:_____ SIP _____

of PS _____

The fol owing list also helps ensure that the documentary requirements of arrest are complied with: S. NO

ACTION

YES

NO

NOT APPLICABLE

1. Date, time and place of arrest

2. Name of officer making arrest

3. Nature of charges

4. Recoveries made from body search

5. Signatures of witnesses and police officer

6. Name of personals identifying or pointing out suspect

(If arrest is made on pointation)

Final y, the officer officer-in-charge of a police station is required to report to the competent magistrate or such other magistrate as the District Judge may direct, al arrests without warrant made by him or in his jurisdiction. Report should be made according to Form No. 26.8(2) of the Police Rules which is reproduced below: **8. TRANSFER OF ARRESTED PERSONS**

When arrest is made in a district in which investigation, inquiry or trial cannot be held, the accused shal be produced before the session's judge or magistrate of the area and an order be obtained for transfer of the prisoner to the district in which offence was committed. 364 Provided the accused is to be transferred to another province, the order of transfer is to be obtained from the Home Department.

9. INITIAL 24 HOURS

364 Police Rule 26.20

203

The police can only legal y detain a suspect for investigation for 24 hours365. If the investigation cannot be completed in 24 hours, then the detainee must be sent to a Magistrate with the relevant jurisdiction over the case. 366

Ideal y, as contained in Rule 18 of the Police Rules 1934, every detainee has to be medical y examined within twenty-four hours. The Senior Medical Officer or Medical Officer is to examine the age, height, weight and the state of health of the prisoner and record it in the admission register. The state of health of the prisoners is also noted along with observations pertaining to their physical and mental conditions to determine the class of labor they may fit in.

Rule 26.6 deals with persons in police custody requiring medical attention. This rule requires the police to arrange for such person's medical examination at the 'earliest opportunity'. Wounded or sick arrestees accused of a non-bailable offence or able to pay bail in a bailable offence are to be transferred to the prison hospital or a neighboring dispensary. 367 Police officers are to ensure his safe custody in the hospital.

Informing of Arrest

The fol owing should also be informed:

1. District Superintendent of Police

2. Relative of the arrest person.

3. Zila Nazim or District Public Safety Commissioner (where applicable)

Seeking Remand

Remand is the re-committal to the custody of a person who has been brought before the Court. Whenever the custody of an accused person is sought by the police beyond twenty-four hours, the person is to be produced before a competent magistrate in order to seek physical remand. 368

10. REMAND

I.

TYPES OF REMAND

Broadly, however, fol owing are the three types of remand:

1. Physical Remand - this is requested by the police when physical custody is required for the investigation.

366 Section 167:

"Procedure when investigation cannot be completed in twenty-four hours.

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-tour hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shal forthwith transmit to the [nearest Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

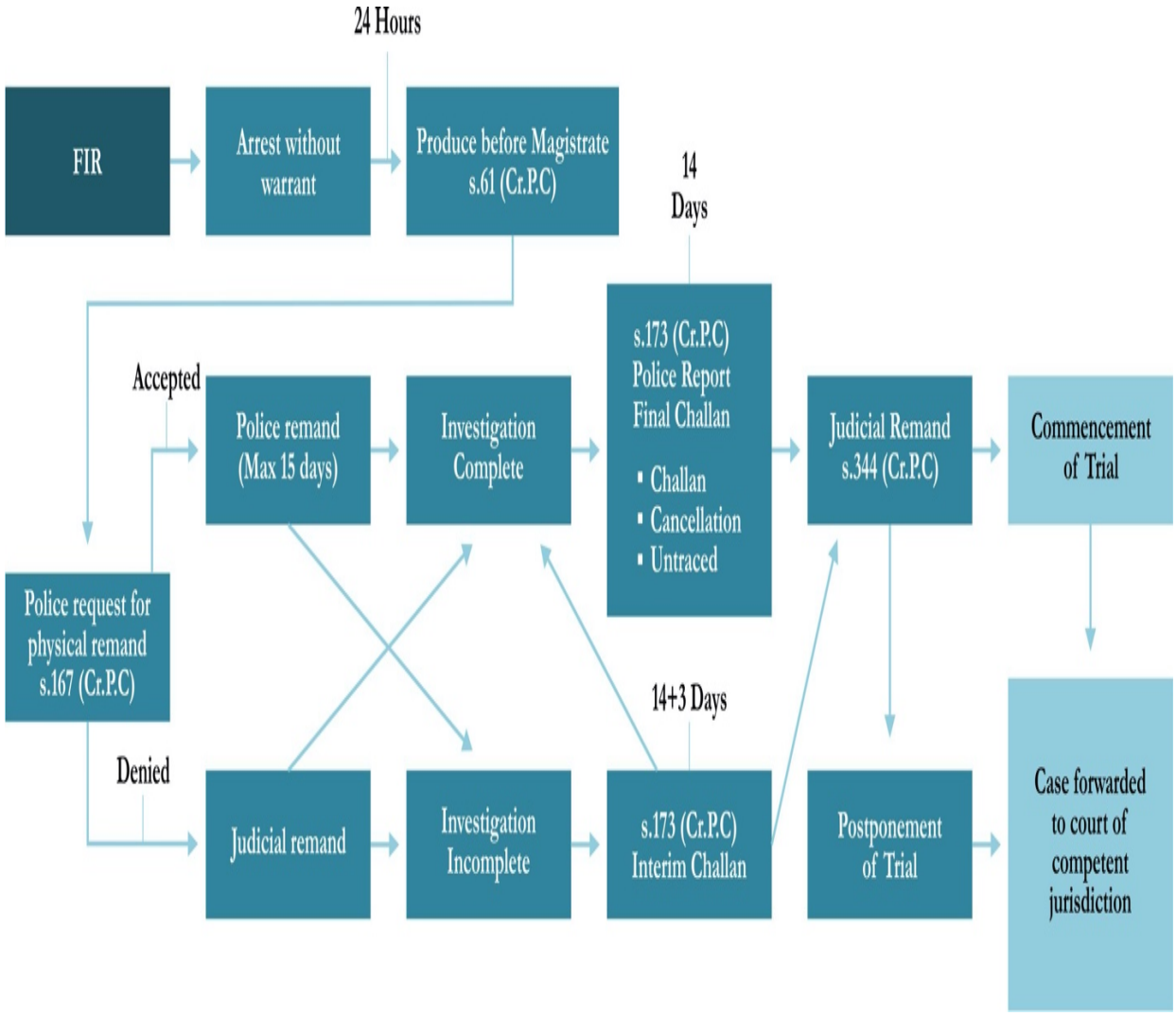
(2): The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or [send] it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, and no Magistrate of the second class not special y empowered in this behalf by the Provincial Government shall authorize detention in the custody of the police

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing."

367 Rule 26.25 Police Rules 1934

368 Section 161 Cr.P.C.



2. Judicial remand – this is granted to provide judicial cover to the continued detention of the suspect who has been denied or is unable to pay bail.

3. Transitory remand – this is granted when an accused is arrested outside the local jurisdictional limits of the Magistrate who issued the arrest warrant and so is brought to the local Magistrate with the intention to be transferred to the warrant-issuing Magistrate.

II. PROCESS OF REMAND

Moreover, fol owing is a table of the applicable procedures applicable to the Remand process: **Additional Procedures Applicable to the Remand prcoess:**

•

Procedure by Magistrate before whom person is to brought (s.86 Cr.P.C.) [See also Rule 26.20 of the Police Rules 1934]

•

Diary of Proceedings in Investigation (s.172 Cr.P.C.) [See Rule 22.48 of the Police Rules 1934]

•

Power to postpone or adjourn proceedings (s.344 Cr.P.C.)

•

Sessions Judge permitted to review the remand order (s.439-A Cr.P.C.)

•

Maintenance of Daily Diary of Police Station (S.167 of the Police Order 2002)

•

Principles for the Guidance of Magistrates when granting remand (Lahore High Court Rules and Order Vol. II , Chapter 11, Part B, para 8)

III. WHEN IS REMAND TO BE SOUGHT?

When an arrested person is either concerned in or suspected of having committed a cognizable offence and an investigation cannot be completed in twenty-four hours, then the police can request the magistrate for physical remand.

In contrast, a person arrested on reasonable suspicion of having committed a non-cognizable offence cannot be detained in police custody beyond 24 hours. That being said, the police is unable to complete the investigation within 24 hours in majority of cases. Holistical y, the police may require

physical custody of the accused for: 1. Recovery of stolen property on his pointation.

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2. Pointation of a place of offence.

3. Arrest of co-accused on his pointation.

4. Recovery of weapon of offence on his pointation.

5. Interrogation by JIT.

6. Identification of foot prints by a tracker.

7. Any other purpose of investigation.

IV. HOW TO SEEK REMAND?

When an investigation cannot be completed within twenty-four hours, yet there are grounds for believing that the accusation and information against the suspect are ‘wel -founded’, the suspect is to be forwarded to appear before a Magistrate (the competent court) as per Section 167 of the Cr.P.C. If there is no sufficient evidence or reasonable grounds of suspicion to justify forwarding the accused to the Magistrate, the suspect may be released from police custody.

Under the ATA, section 19(5) stipulates that the Anti-Terrorism Court may, on good grounds, order that an accused who is so released from police custody, or one who is in judicial custody, be remanded to police custody for further investigation in the case. These reasons are to be recorded in writing. As a result, the ATA offers wider powers of remand going beyond the requirement for sufficient evidence or reasonable suspicion, so long as there are ‘good grounds’ to support the continued detention.

“ON GOOD GROUNDS”

The requirement that remand may be made ‘on good grounds’ requires further elucidation. Section 167 of the Cr.P.C. requires a police officer to

have ‘grounds for believing’ that the accusation or information received against the appellant is well founded. The case of *Rasool Bux v/s. the State* held that the police should have tangible evidence with them which converts their opinion from ‘reasonable suspicion’ to belief under section 167 of the Code about the involvement of the accused. There should be grounds to show that accusation or information is well founded. 369 However, this does not offer much clarity on what is required under the law to turn suspicion into a belief.

The officer-in-charge of police station or a police officer making the investigation if he is not below the rank of Sub-Inspector shal produce the accused person before a Judicial magistrate along with entries in the case diary showing progress in the investigation and the grounds for justifying the accused’s custody with police.

Simultaneously, a magistrate has to be satisfied that the presence of accused with the police is needed for a specific ‘recovery’ or ‘discovery’ or to serve specific purpose connected with investigation.

Final y, a police officer requiring the custody of a prisoner in judicial custody, is to submit a request to the area magistrate. Within the request, the police officer must mention the grounds which justify the grant of police remand. Provided a copy of the remand order is granted, the police officer should deliver the same to the Superintendent Jail, who wil deliver custody of the prisoner to the police.

369 Rasool Bux v. the State, 2005 Y L R 915 [Karachi]

Police Station :_____
Date :_____

REMAND REPORT UNDER 167 CRIMINAL PROCEDURE CODE.

FIR No: _____ u/s: _____
Date and Time of Offence : _____
Date and Time of Report : _____
Place of Offence : _____
Name of Complainant : _____ _____

Accused:
1) Mr…x… (arrested on _____)
2) Mr…y… (not arrested on)
3) Mr…z… (--do--)
4) Two unknown accused Of young age and mediumbuilt (--do--)

BEFORE THE COURT OF CIVIL AND JUDICIAL MAGISTRATE
OF P.S_____
DISTRICT: _____
Respectfully submitted as under:-

1. Brief facts of the case are that on _____ complainant _____ reported that
   ……
   ……(brief facts of the FIR)……
   ……
2. On the complaint, FIR NO. _____ u/s _____ was registered and the investigation was assigned to the undersigned.
3. During investigation, accused Mr. X was arrested on _____ at _____ on the pointation of a source who during interrogation disclosed that he had committed the subject crime along with his accomplices Mr.Y and Mr. Z, and two other persons who are friends of 'Z'
4. Investigation could not be completed and further investigation is to

be carried out for which custody of accused 'X' is necessary.

a) Accomplices 'Y' and 'Z' are to be arrested on the pointation of arrested 'X'

b) Weapon used in commission of offence is to be recovered.

OR

Stolen / robbed property is to be recovered on the pointation of accused 'X'

c) Investigation of planing of offence is to be done.

d) Verification of statement of the accused is to be done.

e) .....(any other reason)

f) .....

5. Under the circumstances, it is requested that police custody remand of accused 'X' may be granted from _____ to _____

Attached : 1) Copy of FIR
2) Case diaries ____
3) Arrest Memo

6. Report is submitted before the court.

SIP _____

of PS _____

The fol owing check-list also helps in strengthening the process of obtaining remand:

S. NO ACTION

YES

NO

NOT APPLICABLE

1. FIR No. with date/time of offence and report

2. Name of complainant

3. Name of accused with date/time of arrest

4. Brief facts of FIR

5. Brief progress of investigation

6. Reasons for further custody of accused

7.

Attached documents

i.

Copy of FIR

i .

Case diaries

i i.

Arrest memo

8. Signature of investigating officer

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V. GUIDELINES FOR MAGISTRATES WHICH SHOULD BE KNOWN TO POLICE OFFICERS

1. Before making an order of remand to police custody under s.167 of the Cr.P.C., the magistrate should: a. Be convinced that there are grounds for believing that the accusation against the persons sent up by police is well founded.

b. There are sufficient grounds and reasons for granting police custody as opposed to judicial/magisterial custody.

c. The magistrate has ascertained what previous similar orders have been made in the case and the longer a person is in police custody the stronger the grounds for remand should be. 370

2. When the accused is remanded into custody by the police, it should be ensured that the period is as short as possible.

3. Ensure that the remand period is as short The fol owing principles are laid down for the guidance of magistrates in the matter of granting remand.

4. Ordinarily, when police requires time to complete the inquiry, the accused should be detained under judicial custody.

5. When the object of the remand is merely the verification of the prisoner's statement, he should be remanded to judicial custody.

6. A prisoner, produced for the purpose of making a confession but has declined to do so, or has made a statement which is unsatisfactory as per the prosecution should, under the circumstances, be remanded to police custody.

7. In any case, when an accused person is remanded to police custody, the reasons must be recorded in the order of remand and a copy of his order forwarded to the session Judge concerned.

VI. WHAT DURATION OF REMAND IS TO BE SOUGHT?

The period of remand in the ATA is longer than that envisaged under the Cr.P.C. Under the Cr.P.C, physical remand cannot exceed fifteen days in total[371] whereas the ATA allows a person to be remanded for a period of thirty days at a time for up to a total period of ninety days. It should be noted that this period of remand applies only to those suspects arrested under Section 5 of the ATA. Suspects arrested under the Government's proscribed lists in Section 11EEE can be detained for a period of up to 12 months.

Provided that the time limit of 15 days has elapsed and the police stil needs custody of the accused for further investigation, the procedure to be adopted is set out under s.344 of the Cr.P.C. This provision states that the case is brought on magistrate's file and the accused, if detention is necessary, wil remain in magisterial custody. The case may be adjourned from time, to time for periods of not more than 15 days each and as each adjournment expires, the accused must be produced before the magistrate and the order of adjournment must show good reasons for making the order.

Section 167 Cr.P.C regulates remand during investigation whereas s.344 Cr.P.C regulates remand that is sought after the case proceedings have been initiated – after submission of the chal an under s.173 of the Cr.P.C. Accordingly, if from the date of recording of the FIR, the officer-in-charge of police station is not able to complete the investigation within fourteen days, he is to submit an interim report to the magistrate within three days of expiry of such period.

Consequently, the proceedings against the accused are commenced upon based upon the interim report. From that 370 Appendix No. 25.58(1) Police Rules

371 Section 167, Cr.P.C.

point onwards, if sufficient evidence has been obtained which raises a suspicion that the accused has committed an offence and evidence may be obtained through remand, the accused shal be sent to judicial custody and case adjourned for time to time for periods of not more than 15 days each

and as each adjournment expires, the accused shal be produced before the magistrate by the jail superintendent.

VII. LEGAL REQUIREMENTS

The Police Rules at Rule 25.56 (2) suggest the grounds for requesting remand.

(2). No application for remand to police custody shall be made on the ground that an accused person is likely to confess. Grounds for such an application should be of the fol owing nature: ---

(a) That it is necessary to take the accused to a distance that he may be shown to persons likely to identify him as having been seen at or near the scene of the offence.

(b) That it is necessary to have his footprints compared with those found on or near the scene of offence.

(c) That the accused has offered to point out stolen property or weapons or other articles connected with the case.

(d) Any other good and sufficient special reason.

Furthermore, the Lahore High Court Rules and Orders, Vol. III, Chapter 11, Part B, para 8 provide principles for the guidance of Magistrates when granting remand, and are reproduced below:

8. Principle applying remand cases. *--The fol owing principles are laid down for the guidance of Magistrates in the matter of granting remands, and District Magistrates [NB: in KP this power has been devolved to District and Sessions Judges] are required to see that they are carefully applied: -*

(i) Under no circumstances should an accused person be remanded to Police custody unless it is made clear that his presence is actually needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted.

(i) When an accused person is remanded to Police custody the period of the remand should be as short as possible.

(i i) In all ordinary cases in which time is required by the Police to complete the inquiry, the accused person should be detained in magisterial custody.

(iv) Where the object of the remand is merely the verification of the prisoner's statement, he should be remanded to magisterial custody.

(v) An accused person who has made a confession before a Magistrate should be sent to the Judicial lock-up and handed over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required, and an order obtained from the Magistrate for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced for the purpose of making a confession, has declined to make a confession or has made a statement, which is unsatisfactory from the point of view of the prosecution, he should not be remanded to Police custody.

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The Lahore High Court has also attempted to define the circumstances in which detention is approved in the case of *Ghulam Sarwar v. The State* and laid down fifteen principles aimed at regulating the grant of remand and improving accountability:372

1. During first 15 days, the Magistrate may authorise the detention of the accused in judicial custody liberal y but shal not authorise the detention in the custody of the police except on strong and exceptional grounds and that too, for the shortest possible period;

2. The Magistrate shall record reasons for the grant of remand.

3. The Magistrate shal forward a copy of his order passed under section 167, Cr.P.C. to the Sessions Judge concerned.

4. After the expiry of 15 days, the Magistrate shal require the police to submit complete or incomplete chal an and in case, the chal an is not

submitted, he shal refuse further detention of the accused and shal release him on bail with or without surety.

5. After the expiry of 15 days, no remand shal be granted unless, the application is moved by the police for the grant of remand/adjournment.

6. The application moved by the prosecution or police after the expiry of 15 days of the arrest of the accused, be treated as an application for an adjournment under section 344, Cr.P.C.

7. Before granting remand, the Magistrate shal assure that the police have col ected sufficient evidence to raise suspicion that the accused has committed the offence and that further evidence wil be obtained after the remand is granted.

8. The Magistrate shal not grant remand /adjournment in the absence of the accused.

9. The Magistrate should avoid giving remand /adjournment at his residence.

10. The Magistrate shal give an opportunity to the accused to raise an objection, if any, to the grant of adjournment /remand.

11. The Magistrate shal record objection which may be raised by an accused person and shal give reasons for the rejection of the same.

12. The Magistrate shal examine police file before deciding the question of remand.

13. If no investigation was conducted after having obtained remand, the Magistrate shal refuse to grant further remand /adjournment.

14. The Magistrate shal not al ow remand/ adjournment after 2 months (which is a reasonable time) of the arrest of the accused unless it is unavoidable.

15. The Magistrate shall not grant remand mechanically for the sake of co-operation with the prosecution/

police.

11. INTERROGATION

The purpose of the interrogation process is to gather information and confessions. At no point should the officer al ow their personal biases to interfere by giving undue importance to certain suspects and pieces of evidence over the other. Al judgments should be reserved until the investigation is complete and should be made on the grounds of sufficient evidence. No confession derived from coercive methods wil be considered admissible or usable evidence in the Courts.

I.

RULES RELATING TO THE ACCUSED IN THE CONTEXT OF INTERROGATION

372 Ghulam Sarwar v. The State, 1984 P Cr. L J 2588 [Lahore]

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Arrested persons under custody are not al owed to have free access to visitors. The guards of the lock-up ensure that no un-authorized person can have communication with a detained prisoner. Rules regarding interviews with prisoners are given in Police Rule 26.28 which are:

1. No person shal be al owed to communicate with a prisoner in a police lock-up without the permission of the officer-in-charge of the police station (as defined in sec-tion 4(p), Criminal Procedure Code), or written authority from a judicial or superior police officer.

2. Authorized interviews shal take place in the presence and hearing of the police sentry and interviewer shal stand sufficiently far from the bars of the lock-ups to prevent physical contract or the passage of prohibited articles between him and the prisoner. When a lawyer wishes to consult and advise a prisoner confidential y as to the conduct of his case, the prisoner may be removed from the lock-up and al owed to sit apart with his lawyer, but within the precincts of the police station, and in the sight of the sentry. At the

conclusion of such interview· the prisoner shal be searched as provided in sub-rule 26.3(2).

II. HOW TO CONDUCT AN INTERVIEW OF THE ACCUSED?

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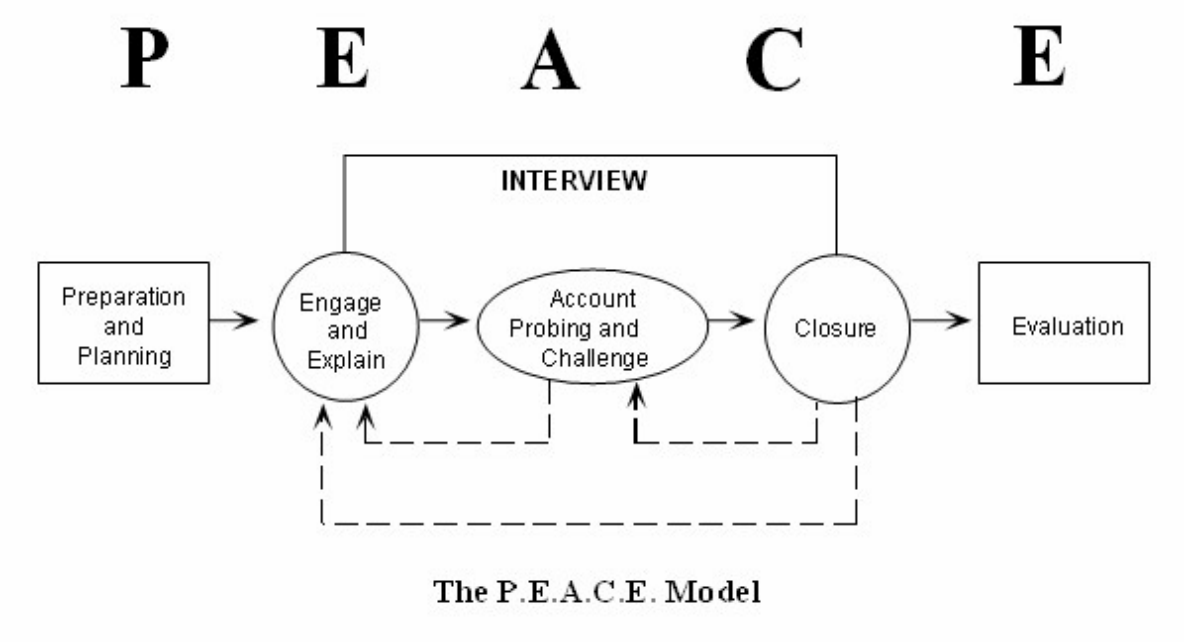
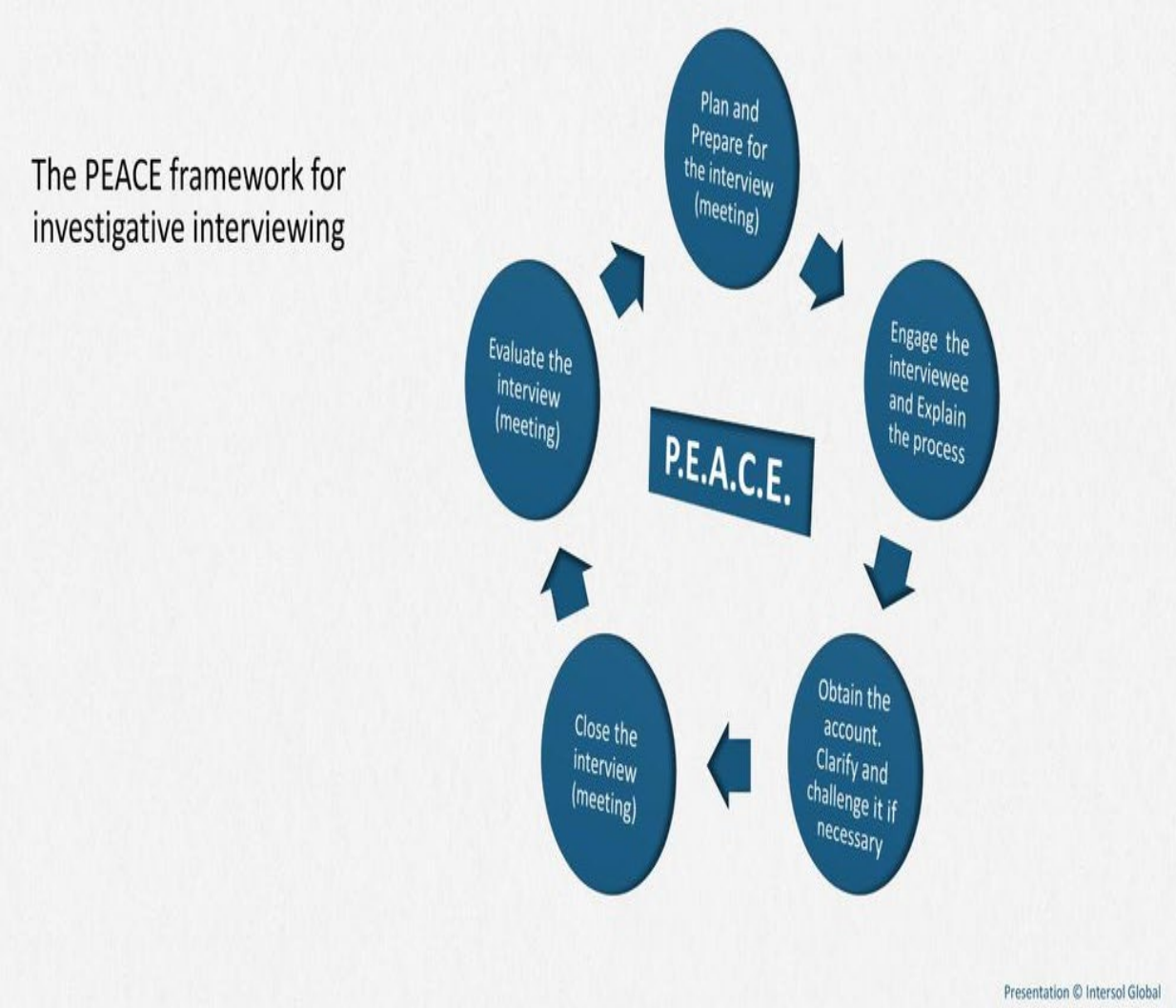


The P.E.A.C.E. Model


The PEACE framework for investigative interviewing
Plan and Prepare for the interview (meeting)
Engage the interviewee and Explain the process
Obtain the account. Clarify and challenge it if necessary
Close the interview (meeting)
Evaluate the interview (meeting)
P.E.A.C.E.
Presentation © Intersol Global

PEACE (Preparation, Engagement, Accounting, Closure and Evaluation) Technique

The Preparation, Engagement, Accounting, Closure and Evaluation (PEACE) model was created in the UK to diminish coercive and manipulative tactics in interrogation models. The primary goal behind the PEACE method is fact-finding and not the extraction of a confession. The model encourages interviewers to be fair and open-minded in their evaluation and to pursue accurate and relevant information. 373

PEACE does not make a distinction between an interview and an interrogation due to its conformity to non-coercive practices. Interviewers can ask open-ended, leading or repetitive questions and chal enge the facts

and 373 Saul M Kassin, Sara C Appleby and Jennifer Torkildson Peril o, 'Interviewing Suspects: Practice, Science, And Future Directions'

(*Web.wil iams.edu*, 2010) <https://web.wil iams.edu/Psychology/Faculty/Kassin/files/K-A-P%20(09).pdf>.-46-47

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inconsistencies in the accounts but they cannot resort to threats, coercion, and promises of leniency, and intimidation. 374 Al PEACE method interviews are recorded and researchers have found that this open approach has solicited information from individuals who initial y denied any involvement in the case. 375 The PEACE method functions on the presumption of innocence.

Pakistan can learn from this technique because it shows that adherence to the law can produce the most accurate result. The technique forgoes the use of violence and intimidation to elicit confessions that may at the end of the day be false and hinder justice and waste time. It shows that at the heart of every investigation should be the col ection of relevant information and in doing so, law enforcers wil be able to derive the information needed to incriminate a suspect without the use of excessive force or violence.

III. INTERVIEWING THE ACCUSED

Steps before the Interview

Often, conducting an interview of a suspect to get the desired information proves chal enging. Indeed, in the majority of cases the success of the IO depends greatly on the interview of the accused. As such, before commencing the interview, it is important for the IO to have, at the very least:

1. Read the FIR minutely.

2. Visited the scene of crime.

3. Examined the injured and deceased where applicable.

4. Ful particulars of recoveries made from the scene.

5. Knowledge of modus operandi.

6. Knowledge of weapons/vehicles (if any) used in the offence.

7. Knowledge of routes of approach/retreat from the scene of offence (if possible).

8. Knowledge of motive (where possible).

9. Knowledge of the character of accused as far as possible.

Conducting investigative interview:

1. At the start, the police officer should always appear to have a lot of knowledge regarding involvement of the accused in the offence. He should not al ow the suspect to go in the defense by asking what he has to say regarding the offence.

2. Police officer must start with a piece of information he already has regarding the involvement of the accused and put direct questions and evaluate the answers.

3. Police officer should keep changing his body language as per conduct of the suspect. He may appear considerate, when required, as if he understands the position of the accused.

4. When it appears that the suspect is coming out of the denial stage, police officer should lay out more information in the form of incriminating evidence that he already has in his knowledge.

5. When any one defense plea of the suspect is proved false and he is forced to admit it, then the Investigation Officer should start putting direct questions. The object at this stage should be to obtain his admission of his guilt directly. By putting relevant questions, he should be forced to reveal certain facts which can be exclusive knowledge of the person who committed the offence.

6. Investigative interview may not be completed in one session. When statement or facts have been obtained and the investigator feels that the interview should be postponed til these facts are verified another 374 Ibid

375 Ibid

215

session should be planned. Investigating Officer should verify the narration of the accused before the next session with the accused. When facts are proved wrong, the investigator ‘wil have sufficient material to confront the accused’.

7. In case an admission is obtained, then the task of the investigating officer is clear and he is required to col ect evidence to prove these facts in court.

12. STATEMENT/ CONFESSION BY THE ACCUSED.

I.

VALUE AND CONDITIONAL ADMISSIBILITY OF STATEMENTS

Under the CrPC, any statements made by individuals in police custody that could be seen as self-incriminating are considered inadmissible. The correct procedure to be fol owed under the Cr.P.C. is that statements and confessions by the accused must be made before a Magistrate under Section 164 who must make note of them himself. Such a recording must be made in the format given below i.e. the form entitled ‘Record of a confession made by the Accused’. This form must be attached to the Police Report. The ATA al ows for the conditional admissibility of statements recorded by the police, where no magistrate is present. The condition is outlined by section 21-H.

II. EXTRA-JUDICIAL CONFESSIONS:

Furthermore, a confessional statement can be considered, a corroborative piece of evidence if it supports other pieces of evidence vital to the case. In the case of *Muhammad Latif v. The State*, 376 the Court held that statements of the prosecution witnesses made during extra-judicial confession were found consistent and the accused had not been able to shake their credibility.

It was said by the Court that since there was no hindrance in the chain of custody of circumstantial evidence and since the extra-judicial confession was credible, the extra-judicial confession corroborated the circumstantial evidence and consequently the plea by the accused was dismissed and the death penalty was upheld by the Supreme Court.

III. LIKELIHOOD OF RECANTING BEFORE A MAGISTRATE

In respect to the judicial confessions under s.164 of the Cr.P.C., the High Court in *Tanveer Ahmed v. The State*[377] held that if a judicial confession is honest and is voluntary it can be made the sole basis for a conviction. Furthermore, such a confession does not lose its evidentiary value even if the same is retracted if it gets independent corroboration from a direct and indirect source of evidence. [378]

Case Study: *Tanveer Ahmed vs. State* (2011 PCr.LJ 677 KHC)

Background

The accused abducted the deceased girl and after murdering her, disposed of her body in different places. The accused cal ed the complainant (father of the deceased) to ask for ransom amount after the homicide.

376Muhammad Latif v. State, 2008 PLD SC. 503.

377 2011 P.Cr.L.J 677 KHC

378 1992 SCMR 754

After his arrest, the accused had voluntarily made a judicial confession before the Magistrate and the same was recorded as per the rules and procedures under Sec. 164 and Sec. 364 Cr.P.C wherein the accused had narrated al the facts. However, the accused later on retracted the confession.

Other Evidence in this Case

The judicial confessional statement was corroborated by independent evidence, such as, recoveries on the pointation of the accused and pointation of the place where the head of the deceased and other articles were thrown by the accused. The Memos of the same were produced in court as exhibits.

Main Findings of the Court

The Sindh High Court held that the other sources of evidence (circumstantial) produced by the prosecution were trustworthy and inspired confidence. The Court relied on a judgment by the Supreme Court which stated that it is

wel settled that if a judicial confession rings true and is voluntary it can be made the sole basis for conviction.

The magistrate had no nexus with the prosecution so the judicial confessional statement was voluntary and was made without any duress, coercion or pressure. Furthermore, such a confession does not lose its evidentiary value even if the same is retracted if it gets independent corroboration from direct and indirect evidence (1992 SCMR 754). Based on the above, the High Court upheld the sentence of death.

Key Lesson

Confessions do not lose their evidentiary value even if retracted if they are corroborated by direct and indirect evidence. Circumstantial evidence can be used to corroborate a retracted confession and retain its evidentiary value.

Witness Statement

Art.161 of Cr.P.C governs the evidentiary value of the witness statement. In *Nasir Ahmad v. State[2],* the court ruled *".. from the statement of the accused/respondent recorded under section 161, Cr.P.C., wherein he had narrated the facts of this unfortunate incident and also admitted that he was part of this unlawful assembly with a specific role, who had tortured and done to death a young lady of 16/17 years under the garb of*

'Ghairat'/'Izzat', so, when the occurrence is an unseen one, even the statement of an accused recorded under section 161, Cr.P.C. could be taken into consideration."

IV. CORROBORATING EVIDENCE

A confessional statement can be considered, a corroborative piece of evidence if it supports other pieces of evidence vital to the case.

V. POINTATION AND RECOVERIES BASED ON CONFESSION/INFORMATION

During interrogation while in police remand, if the accused accidental y or intentional y identifies the venue of the crime scene or leads the police to any piece of evidence, this statement wil be considered as admissible evidence 217

under Article 21 of the Code. 379 Such evidence wil be considered admissible even if obtained via police inducement. 380.

While taking into possession any article on pointation of the accused, the Investigating Officer shal ensure that two memos are made: *fard baramdagi* and *fard maqboozgi.*

FARD BARAMDGI

FARD MAQBOOZGI

The exact location and the surrounding shal be A detailed description of the article shal be mentioned. Two persons, ideal y non policemen and mentioned along with the process of sealing and locals of the area or

someone who has no interest in stamping the evidence. Two persons shal also bear the case, shal bear witness and be made part of the witness to this process, ideal y independent witnesses.

memo. If such persons are not included then reasons However, in practice they are usual y policemen who should be given to explain their absence.

accompany the Investigating Officer to the site of

recovery. This is the first step in ensuring that the

chain of custody is maintained for the exhibit.

VI. NEW INFORMATION FROM SUSPECT (ART. 38 AND 40 OF THE QSO)

The accused's statement that reveals information as to the recovery of any item from the site of incidence or otherwise must be thoroughly recorded. It is because the statement of the accused upon which the item is recovered holds significant value under Article 40 of the Qanun-e-Shahdat Order 1984.

However, according to this article a confession made to the police is not considered an admissible piece of evidence.

In *Abdul Manan v. State*[381], the court held that:

"Confession made before the police was not admissible in evidence".

The Supreme court has also upheld this rule whereby if the main evidence relied was a confession before the police, with no other evidence linking strongly, the evidence was unsatisfactory. [382] Furthermore, according to the Art.39 of Qanoon-e-Shahadat Order, 1984 confession made by an accused while in custody of a police officer wil not be considered as evidence.

VII. METHOD TO FOLLOW WHEN RECORDING STATEMENT OF THE ACCUSED

•

Only a Magistrate of Second and First class (and above) can record a confession by the accused

•

In Anti-Terrorism Courts confessions made to the police are conditional y admissible in court. A confession of the sort must be recorded and a memorandum be made to the effect of Memo format given below.

•

The confession recorded by the Magistrate must be sent by him to the Magistrate who is trying the case

•

The Magistrate must fulfil certain requirements before recording such a confession. The titled ‘RECORD

OF A CONFESSION MADE BY AN ACCUSED PERSON’ needs to be fil ed out and attached to the report[383]

379 AIR 1958 Mad. 451; 1958 Cr.LJ 1196

380 ILR 31 Al .592 (FB); AIR 1957 MB 33

381 *Abdul Manan vs. State* (2017 PCr.LJ Quetta High Court Balochistan)

382 *Hayatullah vs. State,* 2018 SCMR 2092

383CrPC 164: (3) A Magistrate shaft, before recording any such confessions explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shal record any 218

I have explained to (....name...), that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and 1 believe that confession was voluntarily made. It was taken in may presence, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him".

(Signed)
"Distt. Superintendent of Police."

VIII. MEMO OF RECORDING OF CONFESSION

13. ARREST REPORT

Important ingredients of an arrest report

According to Section 26.8 of Police Rules, the reports of arrests ought to be made in an Arrest Form/Court Surrender.

This form is issued in case the arrested accused is the resident of another police station. It is sent to the competent police station for verification of the name, address and place of residence of the accused.

The rule further builds up that the arrest form may be sent by post and the copy of the same is required to be sent to the District Crime Record Bureau of the district concerned. Moreover, the facts of arrest ought to be recorded by an Investigating Officer in his case file. He is required to maintain a case diary to record the grounds and reasons for the arrest made by him. At the time of arrest, the police officer may also search the body of the person in accordance with law. The personal belongings, after the search, are to be kept in safe custody as prescribed under the relevant Police Rules.

The maintenance of a complete and regularly updated Daily Diary is an important duty as the District and Sessions Judge may cal for and inspect such a Diary at any time. Making a false entry in the Daily Diary (if the police officer knows the entry to be untrue) is a serious offence punishable with dismissal from service. 384 Also, where 'wanted'

notices have been issued for an arrested offender or where an important arrest has taken place, the arrest must be published in the Criminal Intel igence Gazette (although in reality this is seldom published). 385

Government of Sindh and others v. Raisa Farooq and others vide386

In the said case, it was stated that case diaries or any information justifying the arrest of a person should be handed over to the Court to show that there were reasonable grounds for believing that detention was necessary for the crime that the accused was charged with.

14. BAIL

The basic concept of bail is the release of a person from the custody of police and delivery into the hands of sureties, who undertake to produce him in Court whenever required to do so. Whether bail is to be granted to the individual 384 Rule 22.50, Police Rules 1934

385 Rule 22.50, Police Rules 1934

386 Honourable Supreme Court of Pakistan in Government of Sindh and others v. Raisa Farooq and others vide 1994 SCMR1283

after an arrest depends on whether he is suspected of an offence that is bailable or non-bailable amongst other factors.

I.

WHAT ARE BAILABLE AND NON-BAILABLE OFFENCES?

In bailable offences the grant of bail is a right and not favor, whereas in non-bailable offences the grant of bail is not a right but considered as a concession/grace. 387 Section 497, CrPC. divides non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years; and (i) offences punishable with imprisonment for less than ten years.

This distinction of offences is made on the grounds of how the law perceives the seriousness of the particular offence.

Bailable offences are general y considered not serious enough to warrant the deprivation of liberty of an individual pending trial, even where sufficient evidence suggests the suspect's involvement in the offence. In cases of non-bailable offences the ability to gain bail or be released on bond is significantly more onerous. Schedule II, Column 5

of the Cr.P.C. lists which offences of the Pakistan Penal Code are bailable or non-bailable.

II. PRE AND POST ARREST BAIL

A suspect/accused can make a bail application(s) to a court before or after his/her arrest. The effect of a pre-arrest bail (interim bail) is that the police cannot arrest the suspect til the date given in the bail order or the conditions mentioned in the bail order are stil in place. The ATA, by virtue of Section 21- D, envisages both pre-arrest and post-arrest bail. In *Noor Hassan v. Haji Muhammad Khan*, 388 the ATC taking cognizance of the facts and circumstances of the case, had granted pre-arrest bail to the accused on the grounds of previous enmity between the parties which amounted to malafide against the accused. The High Court finding no irregularities in the bail order dismissed the application for cancel ation of bail. This case also il ustrates how the law is at times used to settle rivalries, thereby, BAIL

Bail Before Arrest

Bail After Arrest

(s.498 Cr.P.C.)

(s.497 Cr.P.C.)

raising the threshold of the caution to be employed by both the investigating authorities and the judiciary in criminal cases.

III. WHEN CAN BAIL BE DENIED?

In non-bailable offences fal ing in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and the refusal is an exception. So the bail wil only be declined in extraordinary and exceptional cases for example:

1. Where there is likelihood of the abscondence of the accused;

2. Where there is an apprehension that the accused has tampered with the prosecution evidence; 3. Where there is danger of the offence being conducted again if the accused is released on bail; and 4. Where the accused is a previous convict.

387 P L D 1995 Supreme Court SCMR 34

388 *Noor Hassan v. Haji Muhammad Khan alias Turkey,* 2005 YLR 1791.

15. ABSCONDING PROCEEDINGS

I.

INSTRUCTIONS FOR TAKING OUT AND EXECUTION OF WARRANTS FOR ABSCONDERS

Instructions as to the taking out and execution of warrants for absconders are contained in rule 26.5389 of the Police Rules 1934390

II. FORM FOR ABSCONDERS

Rule 23.21 stipulates that the head of the persecuting agency ought to maintain a register in Form 23.21 showing the progress of action against absconders. In addition to the list of al proclaimed offenders to be hung up in the office and on the notice-board of police stations in accordance with rule 23.25, the register of absconders ought to be maintained in the manner prescribed under Rule 22.54 of the Police Rules, 1934 i.e.:

Part I. - In Form 22.54(a) [See Annexure; Form B] containing the names of al absconders in cases registered in the home police station.

Part II. - In Form 22.54(a) [See Annexure; Form C] containing the names of absconders in cases registered in other police stations, but resident of the home police station.

Note. - All entries regarding residents of the home police station should be made in red ink.

Part III. - List of deserters from the army, in Form 26.16(6)

Part IV. - A list in Form 22.54(b) [See Annexure; Form D] is to be published by the Court and displayed in common public places. 391As soon as an absconder is identified as proclaimed under section 87, Code of Criminal Procedure, his name ought to be entered in the proclaimed offenders list maintained under Part I of Register No. X

26.5. Warrants to be taken out when wanted persons abscond. - Permissive authority is given to the police to arrest without warrant in certain cases, in order that they may not be handicapped by having to obtain a magistrate's warrant under Section 204, Code of Criminal Procedure, when the arrest of a criminal or suspect who is present before them is urgent. The law provides, however, no penalty for merely evading arrest by a police officer, though it penalizes resistance to, or escape from, such arrest. On the other hand the law does provide a severe penalty or recalcitrance to an order in the form of a warrant by a Court, entirely irrespective of the evidence of the guilt of the person against whom the warrant is issued. For merely evading obedience to a warrant of arrest, a man is liable to proclamation and the confiscation of his property and any one who harbors him, as defined in section 52-A of the Indian Penal Code, can also be severely punished. Whenever, therefore, a person is wanted, whose whereabouts are not immediately known, the notice shall, before setting off in search of him, obtain a warrant of arrest from the Court having jurisdiction. Unsuccessful search without such a warrant is merely waste of time. On the other hand, immediately it is found that, in spite of all reasonable effort, a warrant cannot be executed, a proclamation order under section 87, Criminal Procedure Code, can be obtained and, on proclamation being duly carried out, attachment under section 88, Criminal

Procedure Code, can immediately follow, and connivance by any person at the continued absconding 390 Rule 21.5 of the Police Rules 1934

391 see rule 23.24(3).

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CHAPTER 8: IDENTIFICATION PARADE

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1. SIGNIFICANCE OF IDENTIFICATION PARADE

This is an investigation tool used by the police to help identify the culprit, given there is a witness. It involves lining the suspect of a crime with individuals (dummies) that match their description. A witness is then required to identify the suspect out of the individuals.

2. WHEN IS IT CONDUCTED:

The identification test is normal y conducted when an accused is not previously known to the witnesses and they have his momentary glimpse. It becomes imperative to hold such test if the witnesses claim that they can identify the accused, if brought before them'.

3. HOW IS IT CONDUCTED

Admittedly, no instruction or the details regarding the holding of identification test stand incorporated in the Code of Criminal Procedure, 1898 or in the Qanun-e-Shahdat Order 1984. Article 22 of Qanun-e-Shahadat Order 1984

which is normal y referred for identification test only pertains to its relevance and does not provide any procedure.

4. WHAT ARE THE RULES TO BE FOLLOWED WHEN CONDUCTING THE IDENTIFICATION PARADE?

Certain guidelines are given in Rules and Orders of the Lahore High Court Volume 3 Chapter 11, Part-C. 392 *(Further details of the process to be fol owed while conducting the Identification Parade have been provided on Pg. 53 of the Evidence Module).* The identification parade proceeding details are recorded in the case diaries and the identification parade proceeding certificate is attached with the judicial file record.

There are certain precautions and rules that need to be adhered to in such proceedings:

- List of al the persons included in the parade should be prepared, by the magistrate in charge of the test. 393

● When a witness identifies a member of the parade, the Magistrate should note in what connection he is identified, including incorrect identifications.

● The identification parade should not be conducted by the police officer when magistrate is available.

● Objection or statements by the accused or witnesses to be recorded and power of magistrate to decide objections

● It must be ensured that the accused is not exposed to the witnesses

● No communication is al owed that would facilitate the identification of the accused before the proceedings. The identity of the accused should be concealed to ensure that the accused should is not seen by the witnesses before the identification parade[394]

● There must be capacity and ability of the eyewitness to identify the accused. [395]

392 2018 MLD 43

393 2016 YLR 1891

394 2011 SCMR 537

395 *Mian Sohail Ahmed vs. The State*, 2019 SCMR 956

● It must be verified that the people including the suspect in the identification parade are handcuffed or are wearing fetters

● The accused is produced before the magistrate with a muffled face

● At the time of the parade the accused is to be mixed up with dummies in minimum ratio of 1-8; the dummies must be of a similar description.

● The names, parentage, address and occupations of the dummies must be incorporated into the memo of the identification test[396]

● The IO must prepare the memo of statements of witnesses who have identified the accused.

● The suspect shal be placed among other persons in the ratio of 8-9 strangers to one suspect. Each person brought should be of a similar description and should be of the same religion and social status as the suspect.

● Each witness shal then be brought up separately for identification purposes[397]

● Each accused should have a separate identification parade[398]

● The conduct of such proceedings must be in line with Art.22 of the QSO[399].

5. WHAT IS THE EVIDENTIARY VALUE OF IDENTIFICATION PARADE?

The evidentiary value of identification parade is il ustrated through the fol owing case law.

Kamal Din alias Kamala vs. The State[400]

Ruling

Art. 22---Test identification parade---"*Identification of an accused person without reference to the role allegedly played by him during the occurrence was shorn of any evidentiary value.*

2017 SCMR 135

"In the identification parade, if the accused is identified without any reference to the role played by them in the incident in issue, then such a test identification parade is legally laconic and is of no evidentiary value".

6. WHAT CAN BE THE IMPACT OF DELAY IN CONDUCTING AN IDENTIFICATION PARADE?

The impact of delay in conducting an identification parade has been highlighted in the fol owing case law.

2017 PCr.LJ 662401

The delay in conducting the identification parade may expose the witness to the accused and hence may compromise the credibility of the procedure of the Identification Parade.

396 *Adnan vs. The State* (2018 MLD 43)

397 2017 SCMR 1546:

398 *Lal Pasand vs. The State*

The Court in this case held, *"the only safeguard against il egal convictions is that the Judge or Judges hearing the case should be conscious of the dangers inherent in the identification of accused by witnesses who are total strangers to them. The proper course in such cases is to have separate identification parades for each accused. And, no explanation has been given in the instant case for not holding separate identification parades."*

399 2016 PCr.LJ 1584: *Identification parades are conducted under Art. 22 of the Qanoon-e-Shahdat 1984 for a two-fold purpose: The first is to establish the identity of the accused and second is to rule out the possibility of false implication of the accused by the complainant/witnesses for any il designs.*

400 2018 SCMR 577

401 *Identification parade was conducted after about ten days of the arrest of the arrest and no explanation had come on record regarding the inordinate delay in conducting the identification parade. Hence, under this case the credibility of the identification parade was compromised.* 224

FORM No. 26.32(1)(e)[2]

POLICE DEPARTMENT _____ DISTRICT

Identification of suspects

Note. - Whenever it is necessary to submit any person suspected of having been concerned in any offence for identification, particular care should be taken, pending the arrival of the identifying witnesses to keep the suspect in some place where they cannot have access to him. On their arrival the suspect should be placed with 8 to 9 men similarly dressed, and of the same religion and status, and the identification carried out whenever possible in the presence of a Magistrate or independent witnesses who should be asked to satisfy themselves that the identification has been conducted under conditions precluding the possibility of collusion. Care must be taken that the identification by each witness is done out of sight and hearing of the other identifying witnesses.

1	2	3	4	5	6
Date and place of identification	Name of witness	Name of suspects he identifies	Description of manner in which the rule regulating such identifications were complied with	Signature of Magistrate or other witnesses in whose presence the test is carried out	Signature of Police Officer in charge.

7. MEMO OF IDENTIFICATION PARADE

8. CHECKLIST OF IDENTIFICATION PARADE

S. NO ACTION

YES

NO

NOT APPLICABLE

1

Identification parade was held in presence of the magistrate

2

Handcuffs were removed

3

Ten dummies of similar age and build were present

4

Names/parentage and addresses were recorded

5

Accused was brought with muffled face

6

Accused was alowed to stand at any number in line with the dummies

7

Witness was not al owed opportunity to see accused before the identification parade

8

Magistrate has endorsed the above precautions on the memorandum of identification parade

9

Data and place of identification parade is mentioned

10

FIR No, Section of law and name of Police Station is available

11

Name, parentage and address of witness available

12

Name and parentage of accused available

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CHAPTER 9 WITNESSES AND WITNESS STATEMENTS

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INTRODUCTION

During a criminal investigation, witnesses can general y be divided into two main groups: First, are the persons who may have witnessed the occurrence of crime i.e., an eye witness, or possess some information or knowledge which may assist the investigation in establishing the chain of events. Second group are the witnesses that may be present during the transaction of col ecting evidence and may testify to its having taken place. It is imperative for a successful prosecution that during investigation, the Police officer investigating the matter identifies such witnesses and records their evidence.

Valuable information about a criminal occurrence can be obtained from person(s) who may not have been ‘eye witnesses’ but nonetheless observed something related to the criminal occurrence through any of their senses, For example:

a. **Sight:** A witness sees ‘A’ stabbing ‘B’ with a knife.

b. **Hearing:** A witness may hear two persons arguing and then several gunshots at 3:15pm from behind a wall. Later a dead body is found at that location.

c. **Smell:** A witness may smel the decomposition of organic material and then discover a body. A witness may have earlier smelt a gas leak in a location that ultimately causes an explosion.

d. **Taste:** A witness may taste some food which is adulterated or poisoned and notice a bad or peculiar taste.

1. WITNESS STATEMENTS DURING AN INVESTIGATION VS. WITNESS TESTIMONY AT TRIAL

A ‘witness statement’ is an account from a person of the events or knowledge of the facts relevant to a crime which is given to a Police officer during an investigation. The Criminal Procedure Code (Cr.P.C.) establishes the legal requirements for Police officers to record such witness statements as well as the purposes for which such statements may be used. It is important at this stage to distinguish ‘witness statements’ from ‘witness testimony’. Witness statements recorded by police officers are recorded during a criminal investigation and by operation of law, they are not admissible as evidence at trial. On the other hand, ‘witness testimony’ is the information that the person, cited as a witness in the report of police officer under section 173 Cr.P.C submitted in court, or any other person, provides to the court during recording of evidence at trial. Witness testimony is admissible at trial and is a strong form of evidence that may be used to convict the accused.

One reason for this is that when an investigating officer records a witness statement, the accused person is usual y not present to confront or chal enge the accusation, or provide an alternative explanation of the information or the events that took place. The maxim *audi alteram partem* or that ‘no person should be condemned unheard’ is the cornerstone of the criminal justice process. Moreover, Article 10-A of the Constitution of the Islamic Republic of Pakistan gives the right to a fair trial to an accused person. Therefore, the law places much emphasis on ensuring that an accused person has a chance to chal enge the evidence and cross-examine witnesses against him. Witness statements recorded by a Police officer under Section 161 Cr.P.C. can be used by the defence to corroborate or contradict a prosecution witness but cannot be used by the prosecution for any purpose at trial. 402

402 **Cr.P.C. Sec. 162. Statements to police not to be signed: Use of statements in evidence.**

2. WHO CAN BE A WITNESS IN A CRIMINAL MATTER?

The law regarding who can be a witness in a criminal matter is broad. A Police officer “may examine orally any person supposed to be acquainted with the facts and circumstances of the case”. 403 Article 3 of the Qanun-e-

Shahadat Order of 1984 further notes that al persons are competent to be witnesses with some reasonable exceptions:

Article 3. Who may testify. Al persons shal be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind…404

3. IDENTIFYING WITNESSES AND ASSESSING THEIR CREDIBILITY

As noted above, the law permits the police officer to examine "any person" as witness and al ows "al persons" to testify, unless prevented from doing so. Some witnesses can be found at the crime scene while others would be identified during the investigation. The victim(s) in certain crimes can often be the best person(s) with firsthand knowledge of the occurrence. One witness may lead to the discovery of other witnesses. Witness may also be identifiable through CCTV footage, house-to-house enquiries, enquiries of people with access to the scene, enquiries of people engaged in local trades, enquiries of relatives, enquiries from places where the victims were present, etc.

It is, therefore, important for investigating officers to keep an open mind and conduct a thorough investigation so as to uncover any relevant witness(es) who may not be apparent at first.

Witnesses at the crime scene can be useful as they may have witnessed the occurrence. However, it is important to be aware that not al persons at a crime scene would be of value in an investigation. Therefore, the investigating Officer ought to make inquiries and make an informed determination of who the best witnesses may be. An investigating officer must also be careful regarding witnesses produced by the complainant or suspect as they may be biased and the information they provide may be misleading. After examining the FIR and visiting the crime scene, the investigating officer may have a fair assessment of who could be valuable witnesses for the purposes of investigation. 405 This may form the basis of

issuing orders for requiring the attendance of these witnesses under Section 160 Cr.P.C.

Witness credibility is critical to a successful investigation and prosecution. The investigating officer should be aware of the personal, familial, social, monetary, or other motivations which may exist for a potential witness to either refrain from giving information to the Police, giving partial information to the Police, or giving wrong and misleading information to the Police. It is, therefore, important that the investigating officer assess the credibility of the witness when examining him/her.

Some criteria to consider for determining whether a witness is credible are as fol ows:

•

He/She is a direct witness to a fact in issue.

•

He/She has no personal motivation to involve the accused in the case.

•

He/She is reputed to bear a good moral character.

403 **Cr.P.C. Sec. 161. Examination of witnesses by police.**

404 **Qanun-e-Shahadat Order 1984 - Article 3 Who may testify**

405 Barrister Abdul Khalique Shaikh (PSP) and Muhammad Akbar (PSP, QPM, PPM) 2014. ‘Basic Investigation Handbook’. Paramount Books (Pvt.) Ltd. Karachi. pg. 160.

•

He/She has a strong personality to bear social pressure.

- He/She is not biased or partisan or pre-disposed towards a party.
- He/She appears to be an independent and reliable witness from the available information.
- He/She is not already involved in litigations with too many parties.
- He/She has not remained a witness in other cases and can be labeled as stock witness of police.
- He/She is not suffering from any medical inadequacies which can hamper judgment.
- He/She has a sound financial status according to his/her lifestyle. [406]

Importance of Impartial and Independent Witnesses[407]

Courts are cautious in evaluating evidence produced before them. It is not the number of witnesses that matter rather the quality and credibility of evidence which attains higher weightage.

Impartial and independent witnesses are those witnesses who have no motive to falsely implicate an accused person.

They should not be biased, partisan, prejudiced or predisposed towards a party or have a strong cause against a party.

Test of a witness is not his relationship with either party but the quality of his testimony in the opinion of the Court.

However, the Court have always given more importance to the evidence of impartial and independent witness.

Where a witness is found independent and reliable, his testimony is general y believed and conviction can be based on the testimony of a single witness. Corroboration by other witness in such situation is only a matter of prudence and caution.

In certain cases, e.g. murder cases, it has been observed that eye witnesses have a deep rooted enmity and a strong motive to falsely implicate the accused. In such a situation, it is not safe for the Police Officer investigating the matter to rely upon such witnesses only. The Police Officer must look further for circumstantial evidence coupled with corroboration by independent witnesses.

Absence of impartial and reliable witnesses creates a doubt, and it is settled law that the benefit of doubt goes to the accused. 408

4. POWERS OF THE POLICE IN RELATION TO WITNESSES

406 Criteria reproduced from Barrister Abdul Khalique Shaikh (PSP) and Muhammad Akbar (PSP, QPM, PPM) 2014. 'Basic Investigation Handbook'. Paramount Books (Pvt.) Ltd. Karachi. pg. 161.

407 This section is reproduced from Barrister Abdul Khalique Shaikh (PSP) and Muhammad Akbar (PSP, QPM, PPM) 2014. 'Basic Investigation Handbook'. Paramount Books (Pvt.) Ltd. Karachi. pg. 189

408 Sikandar v. The State, PLD 1963 SC 17

Section 160 of the Cr.P.C. empowers a Police officer to require witness(es) to attend an investigation when ordered to do so in writing. Under the said provision, a formal written order for attendance is to be issued and a witness issued such an order is compel ed to attend the investigation. 409 This

written order is to be made as per **Form 25.2(1)** of the Police Rules reproduced below:

FORM 25.2(1) Police Rules

ORDER TO REQUIRE ATTENDANCE AT INVESTIGATIONS UNDER SECTIONS 160 AND 175, CRIMINAL

PROCEDURE CODE

Name_____ son of _____ caste _____ Resident of _____

Whereas the presence of the aforesaid person is necessary for the purpose of enquiry into the offence reported to have been committed under section_____ at the Police Station _____; therefore the said persons hereby directed to appear before the undersigned at (place)_____ on (date)_____

at (hour)_____ there to give such information relation to the said al eged offence as he may possess.

_____

Signature and Designation of issuing Police Officer

Date:_____ Hour:_____

Note-

(name)_____ mentioned in this order attended on (date)_____ at (hour)___ at (place)_____ and was permitted to leave on (date)_____ at

(hour)_____ at (place)_____.

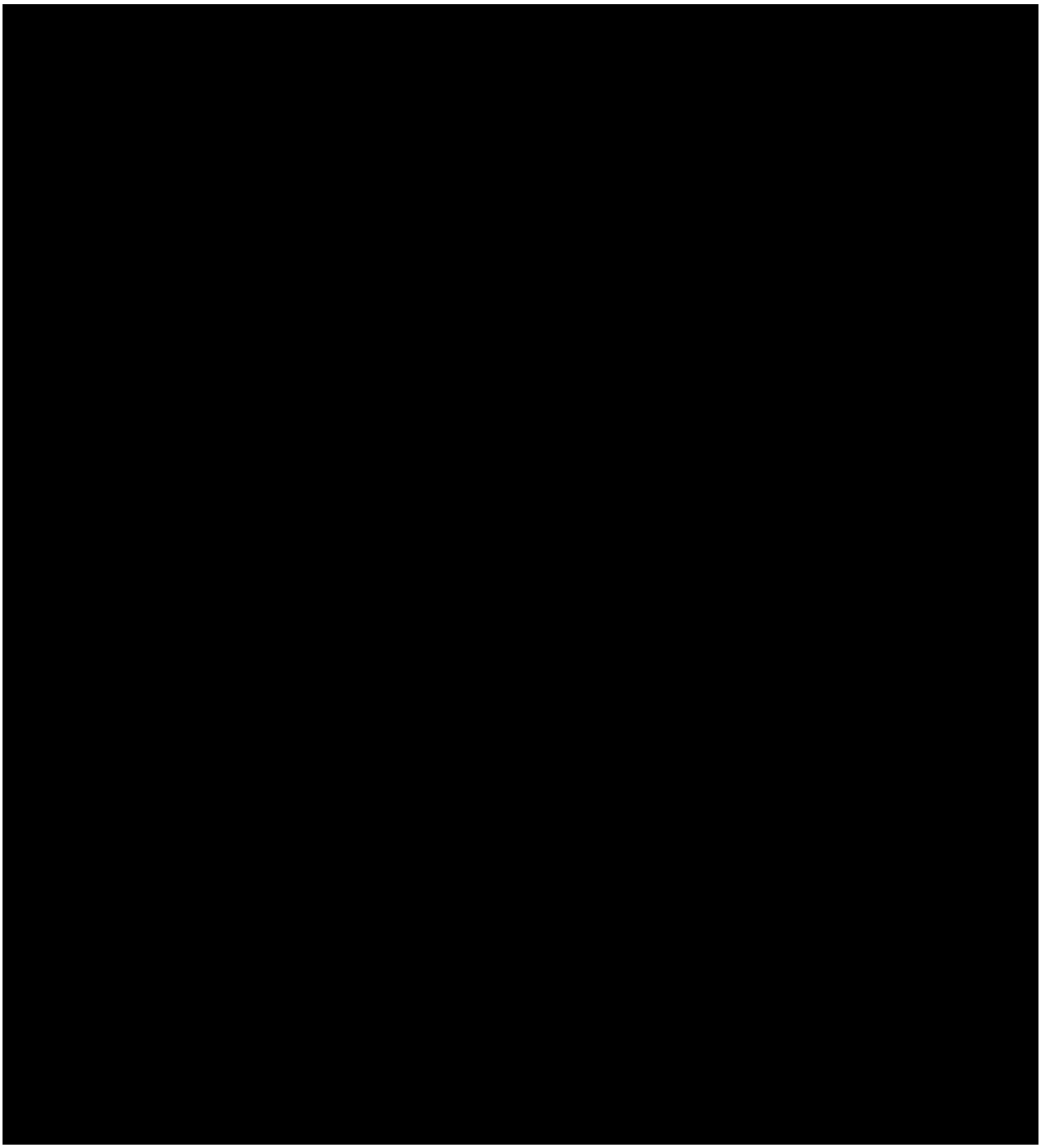
Dated: _____

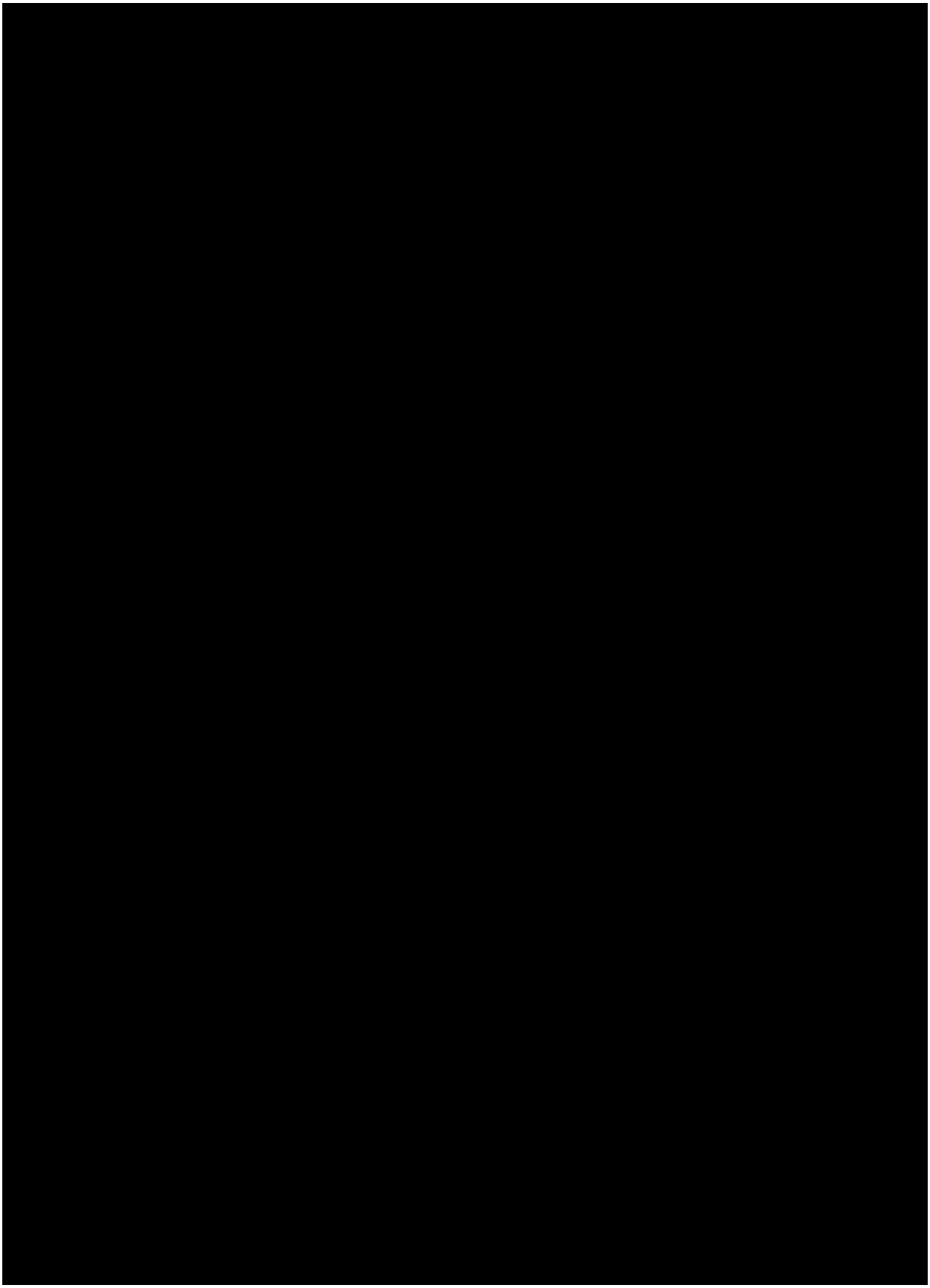
Signature and Designation of issuing Police Officer

5. POWERS OF THE POLICE TO RECORD A WITNESS STATEMENT

Section 161 of the Cr.P.C. empowers a Police officer to “examine oral y any person supposed to be acquainted with the facts and circumstances of the case.” 410 This may include the victim, onlookers, as wel as any other person who may be able to provide information regarding the facts and circumstances of the case. Such person is bound to answer al the questions relating to the case that are put to him by the Police officer except questions the answers to which may expose the person to a criminal charge or to a penalty or forfeiture. Importantly, the Police-officer may 409 **Cr.P.C. Sec. 160. Police-officer's power to require attendance of witnesses.** Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

410 **Cr.P.C. Sec. 161. Examination of witnesses by police.**





record in writing the statement made to him by the witness. There is no prescribed format for recording such a statement. The gist of the witness statement may be recorded in the case diary; however, the complete statement is to be recorded separately on sheets of paper which are to be attached to the case diaries.

The statement may be recorded in a narrative format or may be in the form of answers to questions. One suggested Form411 for recording the witness statement under Section 161 Cr.P.C. is reproduced below: **STATEMENT UNDER SECTION 161 CRIMINAL PROCEDURE CODE**

FIR No. _____ u/s _____

Police State _____

Witness _____ s/o _____

Caste _____ r/o _____

Was examined in the subject case who stated as under:

STATEMENT

_____
_____

_____
_____

_____
_____

_____
_____

_____
_____

_____
_____

_____
_____

_____
_____

_____

Date:_____

_____

Signature of Police Officer

It is important to note that the law does not require a witness to sign his witness statement recorded under Section 161 of the Cr.P.C. 412 The information provided by the witness during an investigation is to be specifical y used for further investigation or determining facts by the investigator. It is only at trial that the information provided by the witness becomes admissible as evidence as it goes through the process of examination and cross-examination.

6. FURTHER STATEMENTS OF A WITNESS

Statements of witnesses already recorded by a Police officer under Section 161 Cr.P.C. can be supplemented at a later stage of the investigation if so required. These would be recorded as separate statements under Setion 161

Cr.P.C. A witness may wish to narrate further information which he learns about after recording his initial statement or may wish to offer information about events or facts which occurred after the recording of the initial statement 411 Form is reproduced from Barrister Abdul Khalique Shaikh (PSP) and Muhammad Akbar (PSP, QPM, PPM) 2014. ‘Basic Investigation Handbook’. Paramount Books (Pvt.) Ltd. Karachi. pg. 163.

412 Cr.P.C. Sec 162. Statements to police need not be signed; use of such statements as evidence.

under Sec. 161 Cr.P.C. The same procedure and documentation as initial recording of witness statement is to be adopted for further witness statements.

At times, the person who has reported the occurrence of a cognizable offence which has led to the registering of an FIR under Section 154 Cr.P.C., may provide further information at a later stage of the investigation. The FIR once recorded cannot be added to or amended, therefore, any additional information would have to be recorded as a statement under Section 161 Cr.P.C.

7. EVIDENTIARY VALUE OF WITNESS STATEMENTS

As noted above, witness statement recorded under Section 161 Cr.P.C. may not be used by the prosecution at trial.

However, they can be used by the accused, upon request to the Court, to contradict the witness if he/she testifies in the trial. The Qanun-e-Shahadat Order 1984 also supports this position and notes that previous statements of a witness may by used to contradict the witness (Art. 140) or to impeach his credit (Art. 151(3)).

8. DELAY IN RECORDING WITNESS STATEMENTS

Delay in the recording of a witness statement can be damaging to the prosecution of the case. It is important that witness statements are recorded without delay as soon as possible after the registration of the FIR or at the time of recovery or evidence col ection, as the case may be. In cases where delay does take place this should be accompanied by a reasonable explanation duly noted in the case diary. Lacking a reasonable explanation of the delay, the court may view the witness and his/her statement with suspicion which may undermine the entire the case.

9. OFFENCES RELATING TO FALSE WITNESSES

Investigating Officers may come across persons who deliberately try to mislead them. The Pakistan Penal Code 1860

criminalizes knowingly providing false information to a Public Servant such as a Police Officer. Some of the offences relating to False Witnesses under the PPC are listed below:

Sec. 177 Furnishing false information. Whoever, being legal y bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shal be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to three thousand rupees, or with both;

or, if the information which he is legal y bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Sec. 182 False information with intent to cause public servant to use his lawful power to the injury of another person. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he wil thereby cause, such public servant—

a. to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

b. to use the lawful power of such public servant to the injury or annoyance of any person, shal be punished with imprisonment of either description for a term which may extend to –

(a) Seven years in case the offence in which false information is gives in punishable with death;

(b) five years in case the offence in which false information is given is punishable with imprisonment for life; or

(c) one-fourth of the longest term of imprisonment or with fine as is provided for the offence in which false information is given and such offence is not covered under clause (a) or clause (b).

Sec. 203 Giving false information respecting an offence committed. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shal be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

It is to be noted that any person who has been summoned as a witness under Section 160 of the Cr.P.C. and whose statement is recorded under Section 161 Cr.P.C. is under a duty to appear and answer the questions put to him by the concerned police officer. 413

10. WITNESS STATEMENTS RECORDED BY A MAGISTRATE UNDER SEC. 164 CR.P.C.

In contrast to recording of statement under Section 161 by Police Officer, Magistrate may also, during the course of investigation record a statement from a witness under Section 164 Cr.P.C. This provision is also utilized to record a confession statement by an accused person. The value of such a statement recorded before a Magistrate is that it becomes admissible as evidence at trial. However, to ensure that the principle of *audi alteram partem* or that ‘no person is condemned unheard’ is adhered to, the Magistrate can only record such a statement in the presence of the accused. This al ows the accused to cross-examine the witness and to contradict or provide an alternative explanation of the events stated by the witness. The requirements for recording a statement under Section 164 are summarized below:

a. Statement must be recorded by a Magistrate of the First Class or Second Class (special y empowered by the Provincial Government),

b. It is not necessary that the Magistrate receiving or recording such statement is the Magistrate having jurisdiction in the case,

c. Statement must be recorded before the commencement of the trial,

d. Statement must be recorded in the presence of the accused and the accused must be afforded an opportunity of cross-examining the witness making the statement,

e. Statement after it is recorded is to be signed by the witness making it.

11. TYPES OF WITNESSES

The criminal justice process can be intimidating for members of the general public and investigating officers must ensure that they make effort to put witnesses at ease and ensure their cooperation throughout the investigation process. Investigating Officers may come across al types of persons who may have some knowledge of the crime that was committed and it is important for a successful investigation that this information is taken into account and where needed the witness participates in the trial by giving his/her testimony in court.

I.

RELUCTANT WITNESSES

413 The only exception to answering these questions is noted in Sec. 161 (2) of the Cr.P.C.: “(2) Such person shal be bound to answer al questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.”

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Certain witnesses can be reluctant to come forward or provide information due to fears of retaliation, enmity, or other loss that the accused, his family, or other associates may inflict on the witness. It is the duty of the Police to protect the public and provide witness protection as and when required. Some witnesses may simply wish to avoid the hassle of getting entangled in a long, drawn out legal process. Others are unfamiliar with legal processes and may not have a positive impression of the criminal justice system which

prevents them from engaging with the police officials to provide information and testimony for the investigation and trial.

II. WITNESS PROTECTION

Some provinces have enacted elaborate witness protection laws that al ow for wide witness protection measures to be enforced. The Province of Sindh has enacted the Sindh Witness Protection Act 2013 which, inter alia, provides for: i.

Establishing a new identity for the witness,

i . Allowing the witness to conceal his/her identity by wearing a mask, changing his or her voice, appearance, or any other form of segregation during the investigation or trial or examination under the law, i i. Using video conferencing facilities from secure locations to protect the witness person, iv. Relocating the witness and his/her family,

v. Providing temporary or long-term accommodation to the witness,

vi. Providing reasonable financial assistance to the witness for establishing a livelihood, vi . Compensating the heirs of a witness if the witness is kil ed due to his/her participation in the witness protection program,

vi i. Making other special arrangements for security of witnesses.

In terrorism cases, Section 21 of the Anti-Terrorism Act 1997 al ows for a range of witness protection measures to be ordered by the Anti-Terrorism Court or the Government. The measures are quite extensive and grant significant room for protecting witnesses in terrorism cases.

Many of the powers noted above wil not be utilized except in the most serious cases where the threat to witness is genuine. It is important to note, however, that the Police is under a duty to protect the public at al times and witnesses are no exception. Therefore, within the existing powers of the police additional security measures to protect the witness can be ordered such as:

i.

Posting a guard at the witness’s residence or place of work,

i . Increasing patrol ing of the witness’s neighborhood by the Police,

i i. Increasing intel igence and informant-based checks on persons who may wish to harm the witness.

iv. Keeping a check on any unusual activity near the witness’s residence, locality, or place of work.

The aforementioned actions do not require any additional empowering law as they come within the basic duties of the Police and can be ordered by the relevant Police Officer with jurisdiction.

III. VULNERABLE WITNESSES

Witnesses may be considered vulnerable due to their age, impairment of intel igence and social functioning, mental or physical disability, or intimidated due to their domestic or employment circumstances or social, cultural, religious or ethnic background. Categories of vulnerable witnesses may include:

•

Women

•

Children

•

Disabled Persons

•

Members of Religious Minorities

•

Other persons in vulnerable circumstances

When interviewing female witnesses or victims, it is important to be sensitive to the nature of the crime and their situation and attempt to provide them a comfortable environment to engage with the investigation process. It is advisable that, wherever possible, services of a female investigating officer should be request to interview a female witness and, where it is felt necessary keeping in view the situation, gravity, and nature of the offence, presence of a family member for comfort should be al owed. Care should be taken where Investigating Officers are dealing with female victims of the fol owing crimes or attempt thereof:

i.

Acid Attacks (Sec. 336B PPC - Hurt caused by corrosive substance),

i . Sexual Assault (Sec. 354 PPC - Assault or criminal force to woman with intent to outrage her modesty), i i. Stripping a Woman of her Clothes (Sec. 354-A PPC - Assault or use of criminal force to woman and stripping her of her clothes),

iv. Rape (Sec. 376 PPC), or

v. Sexual Harassment (Sec. 509 PPC – Insulting modesty or causing Sexual Harassment)

The statement of a female victim in abovesaid crimes shal be recorded by an investigating officer in the presence of a female police officer or a female family member or other person of her choice. 414

It is also important to be mindful of religious and cultural considerations, such as a female witness may not feel comfortable with a video recording of their testimony or that she observes *pardah*.

Children are a particularly vulnerable group and special care needs to be taken when interviewing minors. It is best practice to interview a minor in

the presence of an adult or their legal guardian especial y if asked for by the child.

Similarly, persons with disabilities can be particularly vulnerable and at times are dependent on others. This must be taken into account when interviewing disabled persons as witnesses. Members of religious minorities can be subject to persecution and retaliation for providing information to the Police. It is, therefore, important to offer protection and support when interviewing such witnesses.

Vulnerability can arise due to numerous factors and different persons can be vulnerable in different ways. It is important for the investigating officer to be aware of these issues and structure or plan his/her interview strategy accordingly.

IV. Eye Witnesses and Corroborative Witnesses

As discussed in previous chapters, evidence can be classified as either direct evidence indirect circumstantial evidence. An eyewitness is a person who directly saw the criminal event take place, while a corroborative witness is a person who can only provide circumstantial or indirect evidence of the events surrounding the crime. For example, consider two scenarios where a young cashier is shot to death during the robbery of a convenience store. In the first scenario, one witness is found at the scene of the crime when the police arrive. This witness was a customer inside the convenience store. She saw the robber walk up to the counter, raise his handgun, and shoot the cashier. This witness can identify the suspect. In the second scenario, the witness is a customer who was walking up to the front 414 Cr.P.C. - Sec. 161 proviso to sub-section (1) as amended by Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 (Act XLIV of 2016).

of the store when he heard what sounded like a gunshot. He then saw a man running out the front of the store with a handgun in his hand. Upon entering the store, he saw the cashier had been shot. He can identify the suspect.

In both scenarios, a male suspect is apprehended in possession of a handgun only two blocks away from the scene of the crime. In the first scenario, the witness would be classified as an *eyewitness;* but in the second scenario, the witness would be a *corroborative witness*.

In the described scenarios, both witnesses can provide valuable testimony; however, the evidence of the eyewitness in scenario one would be given more weight at trial because there is a direct connection that the accused committed the offence through direct evidence, and the court would not need to make any interpretation on the veracity of any circumstantial evidence. The witness was present and saw the suspect shoot the victim. The corroborative witness in the second scenario provides strong circumstantial evidence to suggest that the man running from the store committed the shooting; however, additional investigation would be needed to support the circumstantial assumption that the person seen running from the store committed the shooting.

Clearly, eyewitnesses are the type of witness that investigators hope to find in their investigative efforts. Any police investigator wil tell you, eyewitnesses are frequently not present at the scene of a crime, and therefore investigators need to be skil ed at discovering additional physical and circumstantial evidence that can assist the court in reaching its conclusions in relation to the evidence of a corroborative witness.

In the second scenario, additional evidence that might assist the court to reach a conclusion that the suspect running from the store was the shooter might include the fol owing: bal istics from the handgun seized from the suspect matching the fatal bullet found in the body of the accused, gunshot residue from the hand of the suspect showing that he had recently fired a weapon, and/or conclusive information indicating that the suspect and the shooting victim were the only two persons inside the store at the time of the shooting.

This is not to say that these same items of additional evidence would not also be useful to corroborate the witness in the first scenario. The difference is that, in the case of an eyewitness, the additional evidence is a value that is added, while in the case of the corroborative witness, more evidence is required to support the conclusion of guilt beyond a reasonable doubt.

V. Independent Witnesses

In addition to considering the evidence of a witness based on being an eyewitness or a corroborative witness, the court wil also give additional weight to evidence that comes from a person who is an independent witness. An independent witness is sometimes referred to as a third-party witness. They are characterized as independent because;

• They are not associated with the victim

• They are not associated with the suspect

• They are not in any way associated to the criminal event

In other words, an independent witness is someone with nothing to lose and nothing to gain by the outcome of the case. With this inferred lack of vested interest to either side, the independent witness is seen by the court as providing unbiased testimony. Similar to the court, an investigator can attribute more confidence to statements made by persons who are established to be independent eyewitnesses or independent corroborative-witnesses to an event.

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VI. Star Witnesses

In legal proceedings, a star witness is a witness who provides major and crucial information in a criminal case. In some instances, a case may have several star witnesses, and their testimony may cinch a conviction or acquittal, especial y when handled by a skil ed lawyer. The testimony of star witnesses is often a topic of interest for the general public as wel , especial y in high profile cases, and in open courtrooms, there may be a number of bystanders present to listen to the testimony of a star witness.

A witness is someone who provides information in a court of law which is designed to shed light on a case. Juries and judges weigh the information provided by witnesses and submitted evidence to reach a decision in a trial, making the testimony of any witness important in the overal success of a trial. The testimony of a star witness, however, may serve as the basis for

building and presenting a case, making a star witness crucial to the outcome of a trial.

Al sorts of people can serve as star witnesses. In cases about corruption of government agencies, for example, a star witness might be a former employee who witnessed such corruption firsthand. Star witnesses may also have seen murders or other crimes, or they might be in possession of incriminating or exonerating information about a defendant. Many lawyers try to keep the identities of their star witnesses under wraps until the last minute, so that their testimony is a surprise, preventing the other side from preparing.

Typical y, lawyers groom a star witness carefully before putting him or her on the stand. They may go over the testimony in a mock-courtroom, showing the witness what cross examination wil feel like, and asking questions similar to those which might be used in court. The witness may be encouraged to practice vital testimony, and the legal team wil typical y also advise the witness on how to dress and act in court for the right impression.

When a star witness testifies in a high profile case, many news agencies comment on it, reporting the testimony if the trial is public and providing analysis of it. The performance of star witnesses wil also be considered in any media postmortem of the trial, with analysts speculating on how the witness impacted the trial outcome. On occasion, the testimony of a star witness is also quite sensational, attracting a great deal of public speculation and comment.

12. WITNESS INTERVIEWING TECHNIQUE

I. AIM OF THE WITNESS INTERVIEW

The overal aim of interviewing witnesses is to ensure that accurate information is obtained which al ows for the facts to be determined. An investigation officer should not commence witness with any preconceived ideas and conclusions in mind, especial y at the early stages of an investigation. It is possible that witnesses may give information that drives the investigation towards a different conclusion than initial y expected. It is

therefore, important that an investigating officer must keep an open-mind and be guided by the evidence.

II. QUESTION TYPES IN WITNESS INTERVIEWS

Interview questions can be of various types. Those questions and techniques which are both ethical and help establish the truth are mentioned below and include:

•

the ‘T.E.D.’ approach also known as Open-ended questions,

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•

‘5W+H’ questioning which helps establish the What, Where, When, Who, Why and How of the case, and

•

Closed Questioning.

T.E.D. or Open-ended questions

An effective witness interview can be achieved by using a systematic questioning style consisting predominantly of T.E.D. type questions. T.E.D. stands for Tel , Explain, and Describe. These are questions that help the interviewee to recal information. The effect of these type of questions is to minimize any bias distortion or contamination of information that is obtained. Some examples of T.E.D. questions are:

1. Tell me what-has happened here?

2. Tel me about how you got your injuries?

3. Explain how you arrived here?

4. Explain your job to me?

5. Describe the people involved in the incident?

6. Describe the car that drove at you?

5W+H (Closed Specific) Questions

5W+H questions are used to further probe topics that witnesses talk about. Since these questions are sharply focused and elicit a short reply, these questions should be used, where possible, after using T.E.D. questions. Typical examples of 5W+H questions are:

1. What happened when you left home?

2. Where were you standing when the car went?

3. When did you go to work?

4. Who sat next to you in the taxi?

5. Why did he ask you to go for the shopping?

6. How many trains are there before 7 am?

Closed Questions

Closed questions elicit a 'yes' or 'no' answer only. These questions, when unavoidable, should be used after using T.E.D. and 5W+H questions. Some examples of closed questions:

1. Did you go into the house?

2. Have you been to the house before?

Order of Question Types

The most effective use of these question types is to start with TED questions. Then move onto 5W+H questions. You should only use closed questions as a last resort and where possible they should be avoided.

III. TYPES OF QUESTIONS TO AVOID IN A WITNESS INTERVIEW

Avoiding Leading Questions

You should not ask leading questions because they tend to suggest a particular answer to the witness. For example, the question ‘did the man have blue eyes?’ could be seen as suggesting the colour of the man's eyes. The witness may have had a different colour in mind but could be swayed to go along with the suggested colour. This may occur because of the authority they perceive you have, or because they do not want to be seen to be wrong.

Avoid Optional Questions

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These are questions offering several options to the witness. These should not be used. For example, the question:

‘did the girl turn left or right?’ suggests that the only correct answer is either of the two options. The question does the not al ow for any other answer and it may be that the witness's recol ection is that the girl did not turn at al but went straight ahead. This 'suggestibility' can happen with any witness but could be especial y dangerous with vulnerable witnesses (for instance the young or those with learning difficulties).

Avoid Multiple Questions

Multiple questions should also be avoided. For example, the question ‘What time did you leave the cafe and who were you with?’ This involves the witness working out which part of the question to answer first and can thus lead to confusion.

13. RECORDING OF DYING DECLARATIONS

Dying declarations are those statements which are made by the victims of homicide offences as to the cause of their death. 415 Dying declarations are admissible as evidence as by virtue of Article 46(1) of the Qanun-e-Shahadat Order 1984 reproduced below:

46. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statement, written, verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which under the circumstance of the case appears to the court unreasonable, are themselves relevant facts in the fol owing cases:-

(1) When it relates to cause of death. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Dying declarations are an exception to the rule that an accused must be permitted to cross-examine witness or person’s making an accusation against him/her. Therefore, in cases where a person gives a statement as to the details concerning facts or events which later lead to his/her death such as:

a. Naming his attacker(s)

b. Describing how he was attacked, poisoned, injured, etc.

c. Any other important details

Then such a statement wil become admissible in trial and may be strong evidence against the accused. One reason for this is that it is assumed that at the time of death “a man in such a situation would not tel lies or fabricate stories to implicate innocent persons.” 416

There is no prescribed form in which to record a dying declaration. The courts have accepted as admissible dying declarations which have been recorded in the FIR lodged by the victim who subsequently dies. 417 The courts have 415 Shahbaz ahmad Cheema and Samee Ozair Khan, 2013. ‘Dying Declarations in Pakistan and India: A Case Law Study of their Evidentiary Value.’

Pakistan Journal of Social Sciences (PJSS) Vol. 33, No. 1 (2013) p. 97.

416 Shahbaz ahmad Cheema and Samee Ozair Khan, 2013. ‘Dying Declarations in Pakistan and India: A Case Law Study of their Evidentiary Value.’

Pakistan Journal of Social Sciences (PJSS) Vol. 33, No. 1 (2013) p. 97.

417 Abdul Rehman v. The State. PCr.LJ 179 (1995)

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also accepted dying declarations made as part of a statement recorded by the Police under Sec. 161 of the Cr.P.C. 418

While Sec. 162(1) Cr.P.C. prevents the use of witness statements recorded under Sec. 161 to be used as evidence at trial, Sec. 162(2) Cr.P.C. makes an exception in the case of dying declarations. Both the FIR and Statement under Sec.

161, as discussed above, are not ordinarily admissible at trial as evidence, however, when they contain a dying declaration, the court does al ow such documents to become admissible.

The Police Rule 25.21 provides for how a dying declaration may be recorded and is reproduced below: **25-21. Dying declaration…**

(1) A dying declaration shal , whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shal , id possible be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no magistrate can obtained, the obtained, the declaration shal , when a gazetted police officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

(4) If no such witnesses can be obtained, without risk of the injured person dying before his statement can be recorded, it shal be recorded in the presence of two or more police officers.

(5) A dying declaration made to a police officer should, under section 162, Code Criminal Procedure, be signed by the person making it.

Evidentiary Value of Dying Declarations

While dying declarations are admissible, their evidential value is to be judged by the court. The general rule is that dying declarations are to hold value in the eyes of the court except where evidence to the contrary is established. As noted by the Supreme Court of Pakistan "the sanctity attached to such statement [dying declaration] by the statute should be respected unless there are clear circumstances brought out in the evidence to show that a dying declaration is not reliable for any reason." 419 Dying declarations may also be the sole basis of conviction in cases where they are determined to be truthful and genuine by the court, but an investigating officer must not solely rely on dying declarations and must endeavor to col ect further evidence before concluding his investigation.

14. STATEMENT OF AN APPROVER

In certain cases, the Session Judge, or a Judicial Magistrate have been empowered to tender pardon to an accomplice subject to conditions. The Session Judge, or a Judicial Magistrate may, at any stage of investigation or inquiry in to, or trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or in directly connected in or privy to the offence, tender pardon to such a person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor, in the commission thereof, provided that, no person should be tendered pardon who is involved in an offence relating to hurt, or Qatl (murder) without permission of the victim or, as the case may be, of the heirs of the victim.

Statement of an approver is basically the confession of an accused recorded after grant of pardon.

The Police officer should know that magistrates have been given strict guidelines for recording of confessions. They must ensure that the accused has not been subjected to pressure or inducement. Al Police officers who exercise any 418 Muhammad Abbas v. The State. SCMR 129 (1984)

419 Zarif Khan v. The State. PLD SC 612 (1977).

authority in connection with investigations are required to have a thorough understanding of these guidelines given to the magistrates.

The main requirements regarding approvers, in so far as the police are concerned are as under:

•

No police officer may offer a pardon. An accused person desirous of making a statement with a view to obtaining a pardon, shal be told that no promise whatsoever can be made, but that if a statement is made and verified and found to be of sufficient importance to merit such action, the facts wil be reported to a magistrate, who has power to offer a pardon. No steps may be taken in this connection by subordinate police officers without the previous sanction in writing of a gazetted police officer.

•

Statement under Sec 337 Cr.P.C shal be recorded by a magistrate, other than the district magistrate having the highest powers.

•

Approver shal remain under arrest til conclusion of trial.

•

Approver, though an accused when he made confession, is not an accused when the confession is given as evidence during trial but only a witness who gives evidence on oath.

•

If he fulfils the terms of pardon and gives a satisfactory account according to terms of pard on, he wil be released after the conclusion of the trial.

•

Evidence of an approver must stand the test of reliability and corroboration. It must appear that the evidence is probable and natural in the circumstances of the case. At the same time, it must be corroborated by other evidence. Investigating officers should not rely on the sole statement of the approver to achieve a conviction in a case.

•

Normal y when sufficient evidence is available or can be otherwise obtained, against al the accused persons, then there is no need to tender pardon to an accused. Police officer should be confident that there is strong evidence which is sufficient to achieve conviction even in the absence of statement of the approver.

•

In cases of organized gangs, the main accused should never be made an approver and someone junior in the hierarchy of the gang should be made an approver.

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INTRODUCTION

The quality of investigation of various offences has been a target of regular criticism both by the Courts and by the relevant stakeholders. Indeed, if a proper investigation is not conducted, it could lead to an eventual acquittal of the accused(s) which, in turn, contributes to a low conviction rate. Accordingly, in keeping with the aim of the handbook, this chapter seeks to provide an understanding of some of the aspects relating to the investigation of: homicide, violence against women and theft. Therefore, this chapter is aimed at providing ad-on information to that which has been discussed in other chapters and, for this reason, it should be read in conjunction with the others including, in particular, Chapters 6, 9, 12 and 15.

Actus Reus and Mens Rea

Actus Reus, sometimes cal ed the external element of a crime, is the Latin term for the "guilty act". It is the physical part of a crime which can comprise of either a bodily movement (Act), a failure to perform an act when legal y required to do so (Omission) or a state of affairs e.g. being in possession of contraband.

On the other hand, Mens Rea is the internal element of a crime and is a Latin term for “guilty mind”. It is the mental element of a crime which underpins a crime e.g. intention, recklessness, negligence, dishonesty, knowledge and belief.

In order for a successful prosecution, it is necessary for *both* the actus reus and mens rea to be proved. As such, it is important for an investigator to remember that mere actions do not make an individual guilty *unless* it is accompanied by a mental element, and vice versa. Indeed, in order to prove someone as guilty of the crime, the accused must have performed the actus reus of that crime while having the mens rea for that crime at the same time.

1. HOMICIDE (QATAL)

Homicide (Qatal) may be defined as the kil ing of one human being by another human being. Accordingly, a homicide requires both a human victim and a human cause which brings the result about. At the same time, a

distinction is to be drawn between a homicide, and natural death, suicide or a kil ing by an animal. Moreover, it must be noted that the requirement that actus reus must be coupled with mens rea applies to offences of homicide with greater rigour than other offences. This is due to the reason that criminal homicide in Pakistan comprises of four distinct offences each of which involve the same consequence i.e. the death of the victim. They are distinguished principal y on the basis of the mens rea that is required for each of them. Therefore the mens rea wil determine which if any of the 4

types of criminal homicide wil be applicable in a given situation.

The fol owing table seeks to outline the types of homicide and the legal provisions that apply to them: CRIMINAL HOMICIDE

JUSTIFIED HOMICIDE

EXCUSABLE HOMICIDE

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Unlawful kil ing of another human Kil ing of an individual with Where the kil ing is not caused

being which the law penalizes:

intention but when required or

due to any intention,

• Murder **(Section 300 PPC –** authorized by the law (good reason

recklessness or negligence by

Qatl-i-amd; Section 301 PPC – for the kil ing) or when necessary as

any person and may have

Causing death of person other a means of self-defence or defence

occurred due to an accident but

than the person whose death) of others:

no law is broken. Some

• Manslaughter **(Section 315 PPC** • Section 76 PPC – When death is

examples are:

– Qatl-e-shibh-i-amd; Section

caused by a person bound by

• Section 80 PPC – Death

318 PPC – Qatl-i-khata; Section

law to do so or by mistake of

occurring due to an accident in

320 PPC – Qatal-i-khata by

fact believing him to be bound

doing a lawful act.

rash or negligent driving;

by law to do so.

• Section 82 PPC – Death

Section 321 – Qatl-bis-sabab)

• Section 77 PPC – An act done by

occurring due to the act of a

a judge when acting judicial y in

child under the age of 7 years

the exercise of any power

• Section 83 PPC – Death

which is, or which in good faith

occurring due to the act of a

he believes to be,' given to him

child above 7 years of age and

by law.

under 12 years of age who has

• Section 78 PPC – When the act

not attained sufficient maturity

which causes death is done in

and understanding.

pursuance to a judgment or

• Section 84 PPC – Death

order of the court.

occurring due to an act of a

• Section 79 PPC – When the act

person of unsound mind

which causes death is done by a person justified by law or believing himself to be justified by law.

• Section 81 PPC – An act likely to cause harm, but done without criminal intent, and to prevent other harm.

• Section 96 PPC – Death caused in the exercise of right of private defence by the accused.

Examples are Capital Punishments/ Executions, Police Shootings, Protection of State's Sovereignty, Self Defence

I.

CRIMINAL HOMICIDE

TYPE OF HOMICIDES

DESCRIPTION

Murder

Murder is the unlawful kil ing of another with a deliberate intention to kil . It is

defined in Section 300 of the PPC as:

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“Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the

ordinary course of nature is likely to cause death, or with-the

knowledge that his act is so imminently dangerous that it must in

all probability cause death, causes the death of such person, is said

to commit qatl-e-amd.”

Moreover, under Section 301 of the PPC, it is also qatl-e-amd if a person intending

or knowingly acts to cause the death of a person but ends up causing the death of

another. It therefore should become clear for an investigator that the mens rea in

question does not have be specifical y present against the actual victim. In this

manner therefore, an accused who has kil ed an innocent bystander due to firing

directed at another person wil also be charged with qatl-e-amd.

Manslaughter

Manslaughter is a type of criminal homicide where there is no deliberate intention

to kil another person but other mens rea may be present which when coupled with

the actus reus of causing death results in the commission of a criminal offence.

Pakistan's criminal code contains 3 distinct manslaughter offences which are as

fol ows:

1. Qatl-e-shibh-i-amd – This type of criminal homicide is not accompanied by an intention to kil but rather an intention to cause harm to the body or mind of

the victim in a manner that would normal y not cause the victim's death but

death occurs regardless. It is defined in Section 315 of the PPC as: *"Whoever,*

with intent to cause harm to the body or mind of any person, causes the death

of that or of any other person by means of a weapon or an act which in the

ordinary course of nature is not likely to cause death is said to commit qatl-e-

shibh-i-amd."

2. Qatl-i-khata – This type of criminal homicide occurs where there is no intention to cause death or even to cause harm to an individual but death of the victim

occurs due to negligence/carelessness of accused. It is defined in Section 318 of

the Pakistan Penal Code as: "*Whoever, without any intention to cause death of,*

or cause harm to, a person causes death of such person, either by mistake of act

or by mistake of fact, is said to commit qatl-i-khata."

Qatl-i-khata can be caused by an act or an omission (failure to act when required). This is also prominent in cases where a person owes a duty to save someone's life and disregards that duty or performs the duty to such a poor standard that it amounts to negligence. Cases of medical negligence and construction/factory mishaps are examples of this. Additional y, Qatl-i-khata may also be caused by rash and negligent driving in which case the offence is under a separate provision under Section 320 PPC.

3. Qatl-bis-sabab – This type of criminal homicide occurs without any intention to kil or to cause harm being present on the part of accused but death of the victim

occurs due to the accused having done some unlawful act which becomes the cause of death.

Murder and manslaughter are distinguished based on the relevant state of mind of the accused which be intention, recklessness or negligence. One can make an inference of the state of mind of the accused from his actions which tell an investigator the degree of commitment the accused had towards bringing about

the result. For example, repeated fire shots are a clear indication of an intention to

kil , attempts to mitigate or prevent harm indicate absence of intention, disregard

of safety requirements indicates recklessness.

It is important for an investigator to quickly identify which type of homicide he is

investigating and to look for evidence with that in mind.

Attempted Murder

This is the incomplete crime of committing criminal homicide where the accused

acts with intention to kil another or with knowledge that what he is doing is likely

to cause death of another and is unable to execute the act of kil ing for any reason.

It is important to understand that here the accused is acting with the same mens

rea as that required for qatl-e-amd but is not able to execute the final requirement

of actus reus of that offence which is the result of causing the death of the victim.

Attempted murder is defined in Section 324 of the PPC as:

“Whoever does any act with such intention or knowledge, and under such

circumstances, that, if he by that act caused qatl, he would be guilty of

qatl-i-amd”

II. DISTINGUISHING BETWEEN CASES OF HOMICIDE AND SUICIDE

An important component of investigating homicide cases—and for that matter any kil ing—is the investigators ability to identify the cause of death after examining the body. While conclusive evidence to the cause of death comes from the Medico-Legal Expert who gives his findings after carrying out a post-mortem examination of the dead body, the investigator cannot wait for the report of the medico-legal expert since in homicide cases time is of the essence if the suspect has to be traced before the trail of evidence runs cold.

In this respect, an investigator may ordinarily be confronted with a situation where he has to determine whether the cause of death could be homicide or caused by an animal, an accidental fal or injury or the result of the deliberate actions of the victim to end his/her life. It is also not uncommon for homicides to be disguised as suicide. Therefore, Section 174 of the Cr.P.C empowers the officer in charge of a police station, or some other police officer duly authorized by the provincial government, to intimate the nearest Magistrate empowered to hold inquests and to proceed to where the dead body is present and in the presence of two local inhabitants, carry out an investigation into the apparent cause of death. This is done when the said police officer has received information that a person has:

1. Committed suicide;

2. Has been kil ed by another person, or by an animal, or by machinery, or by an accident; or 3. Has died under circumstances raising a reasonable suspicion that some other person has committed an offence

The report prepared upon the conclusion of such investigation is cal ed the “inquest report” which is made on Form 25.35 of the Police Rules420. The dead body is then transmitted to the medical examiner along with a copy of

the inquest report wherein findings of the condition in which the body is recovered are mentioned in the relevant columns.

Moreover, Section 176 of the Cr.P.C empowers Magistrates, where they consider it expedient, to make the examination of a dead body that has already been buried. Accordingly, in order to determine the cause of death, the Magistrate may have the body disinterred and examined. The same is governed by Rule 25-34 of the Police Rules lays down the procedure for the disinterment of dead bodies. The same is reproduced as fol ows:

25-34. Disinterment of bodies. – The following rules relate to the disinterment of bodies:*---*

(1) An officer in charge of a police station and any superior police officer lawfully making an investigation into the unnatural or sudden death of any person shall, on learning that the body of the deceased person has been formally buries, record in writing the information which has reached him and the grounds on which he considers it necessary that the body should be disinterred.

(2) He shall forward the information so recorded to the nearest magistrate empowered to hold inquests and ask for an order under section 176(2), Code of Criminal Procedure, and in the meantime shall guard he grave.

(3) On receipt of such order, if the magistrate himself does not attend the disinterment, such police officer shall, in the presence of two or more respectable inhabitants of the neighbourhood, cause the body to be disinterred. Such police officer shall then comply with the provisions of section 174, Code of Criminal Procedure.

(4) Police officers shall invariably examine witnesses to prove the identity of disinterred bodies before commencing their investigation.

(5) When a body has lain in the grave for a period exceeding three weeks no disinterment shall be made by any police officer until the opinion of the Civil Surgeon has been obtained, and then only with the concurrence of the District Magistrate.

Evidence found at the crime scene also plays a crucial role in understanding whether the deceased committed suicide or whether he/she became the victim of a criminal homicide. The investigator is required to pay close attention to al the physical evidence including trace evidence found at the crime scene. It is often the minor details which prove to be the most compelling evidence in determining the true cause of death.

Possible reasons:

1. Domestic problems.

2. Love affairs.

3. Poverty.

4. Business loss.

5. Depression.

6. Failing exams etc.

420 Annexure I

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That being said, there are instances where sometimes murder is portrayed as a case of suicide by hanging. 421 Thus, it is helpful to be able to discern the unique signs on the death body of a person who has committed suicide by hanging which are as fol ows:

Signs of death by hanging:

1. A ligature mark.

2. Marks of dribbled saliva.

3. Fracture or dislocation of cervical vertebrae.

4. Absence of fatal injuries or poisoning.

5. Congestion and haemorrhage in the lymph nodes above and below the ligature mark.

Furthermore, there are also some tell-tale signs present at the scene of occurrence which could be useful in distinguishing a suicide from a criminal homicide which is disguised as a suicide. Therefore, the crime scene must be thoroughly examined. The fol owing points should be considered when examining the crime scene:

1. Examination of trace evidence on the stool or chair.

2. Position of knot should be examined carefully

3. The rope should be carefully examined in the laboratory

4. Tracing DNA on the rope

5. Any signs of struggle or violence

6. Presence of any poisonous material

7. Finding any stool or chair that was used for hanging

III. CIRCUMSTANTIAL EVIDENCE:

People often commit suicide in moments of extreme stress and depression. Mode of committing suicide might be different, but the place of the incident may provide certain indications that the deceased has committed suicide.

Therefore, the fol owing must be observed:

1. Whether the place is private and the occupant is not likely to be disturbed?

2. Whether doors and windows are locked or not?

3. Is any stool, table or chair present in the room if body is discovered hanging?

4. Any poison present or not?

5. Any signs of foreign intrusion?

6. The behaviour of the deceased before death?

7. Any preparation done by the victim prior to his death, e.g. suicide note, renewed/new life insurance policy etc.

IV. CUTTING AND SHOOTING

When such a case arises, the IO should consider the fol owing factors during the investigation: 1. Location of wounds

421 Hanging is a form of violent asphyxia death which is caused by the suspension of the body by a ligature around the neck, constricting force being the weight of the body.

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2. Number of wounds

3. Direction of wounds

4. Depth of wound

5. Type & size of weapon used

6. Blackening & charring in the case of firearm injury

The location of the wounds and the direction in which they have been made wil lead the investigator to conclude whether these have been self-inflicted or otherwise for e.g. a right handed person wil cut their left wrist or such other part of the body which is within easy reach of the right hand. The investigator may also be able to form an opinion through the number of wounds, the depth of them and the type of weapon whether the act was impulsive or thoroughly planned prior to execution.

Similarly, in self-inflicted gunshot wounds there wil general y be no repetition and multiple firearm injuries from close range would therefore run counter to the theory of suicide. Blackening and charring of the skin around

the entry wound is indicative of a close range firearm injury. The scorching and burning of the skin is caused by hot cases and possibly residual burning gunpowder exiting from the firearm weapon along with the bul et. Final y, an absence of these signs is indicative that the bul et was fired from more than 3 feet away which rules out suicide given the fact that this exceeds the reach of a human being from which to shoot himself.

Role of Investigators and First Responders in Relation to Homicide Cases

The Police can receive information about homicide cases in a number of ways. Similarly, it is also quite possible that the first notification may not be for homicide but to provide assistance to an injured person. Once the crime has been reported, the nearest police patrols must be directed to reach the scene.

However, it must be noted that the first responder is usual y not the eventual investigating officer but, nevertheless, some very important tasks fal upon such person/persons both with regard to initial rescue/assistance to the victims and also with regards to the preservation of evidence at the crime scene. Both these aspects, have been discussed in detail in Chapters 9 and 6 respectively. Accordingly, this section wil only focus upon the specific aspects that relate to homicide, and an investigator should read this chapter in conjunction with the ones on Crime Scene and Evidence.

V. PRIORITIES OF THE FIRST RESPONDER

The first responder is expected to perform the fol owing tasks upon arriving at a homicide crime scene: 1. Provide medical assistance to the victim(s), if any are alive.

2. Convey information to the relevant police station for arresting the offender.

3. Summon additional force if the situation demands.

Broadly, however, the ultimate objective of securing evidence must guide the actions of the first responder. In the specific context of homicide cases:

1. The first responder must ensure provision of medical aid to the injured persons and the same must be his first priority.

2. Secondly, the responder must protect the dead body from any disturbance or interference.

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These steps, however, are additional to the ones elaborated in Chapter 6 (The Crime Scene) with respect to the duties of the first responder.

VI. PREVENTING CONTAMINATION OF THE CRIME SCENE

1. **Dead Body:** Preserving and safeguarding the dead body is essential for further investigation. The first responder should preserve any clothing, ornaments or other belongings in the same position as he found them when he arrived at the crime scene. The first responder should also take note of any changes that took place in the crime scene, before his arrival. This information shal be promptly conveyed to the investigation officer when he arrives at the scene.

2. **Witnesses:** If the suspect escapes from the crime scene, the first responder should gather as much relevant information as possible about the suspect, i.e. number, age, dress, mode of transport and route of escape, and immediately convey the description to the nearest police station for dispatching of the police parties to arrest the criminals. Witnesses must be identified as early as possible by the first responder, and the witnesses should not be al owed to exchange ideas amongst themselves or with other people so that the accuracy of events is not tainted with the amalgamation of hearsay narrations of events from the other witnesses. It is also a tendency of witnesses to mould their testimony or discard parts of it altogether because they are inconsistent with the version of another more influential or venerable witness whom they do not wish to contradict.

VII. INVESTIGATION OFFICER UPON ARRIVAL AT THE SCENE OF DEATH

The role of the first responder is a limited one and he shoulders the burden of rendering assistance to victims; apprehending the suspect(s); preventing

crimes; endeavouring to preserve evidence. However, the actual investigation has to be conducted by the assigned investigating officer who takes over the crime scene from the first responder upon his arrival. The Police Rules outline what actions the investigating officer needs to take immediately upon his arrival at the scene of death. These guidelines are as fol ow:

25-33. Investigating officer – action at scene of death. *– On arrival at the place where the body of a deceased person is lying, the police officer making the investigation shall act as fol ows:---*

(1) He shall prevent the destruction of evidence as to the cause of death.

(2) He shall prevent crowding round the body and the obliteration of footsteps.

(3) He shall prevent unnecessary access to the body until the investigation is concluded.

(4) He shall cover up footprints with suitable vessels so long as may be necessary.

(5) He shall draw a correct plan of the scene of death including all features necessary to a right understanding of the case.

(6) If no surgeon or other officer arrives, he shall, together with the other persons conducting the investigation, carefully examine the body and note all abnormal appearance.

(7) He shall remove, mark with a seal, and seal up all clothing not adhering to, or required as a covering for, the body, all ornaments anything which may have caused or been concerned in the death of the deceased and shall make an inventory thereof.

In the inventory shall be described the position in which each thing was found and any blood-stain, mark, rent, injury or other noticeable fact in connection with such thing. The number and dimension of such stains, marks, rents, injuries, etc., shall also be given in the inventory.

A counterpart of the mark and seal attached to such thing or to the parcel in which it has been enclosed shall be entered in, or attached to the inventory.

(8) He shall take the finger prints of the deceased person if the body is unidentified.

(9) *The photographing of the body in situ and of the scene of the occurrence may prove of great evidential value.*

VIII. RESPONSIBILITIES OF THE INVESTIGATING OFFICER

RESPONSIBILITIES

DESCRIPTION

SPECIFIC TO

HOMICIDE

Photography

The requirement of taking photographs in homicide cases is stipulated under Police Rule 25.33(9), which states:

"The photographing of the body in situ and of the scene of the

occurrence may prove of great evidential value."

Photographs of the crime scene assist the court and the prosecutors to formulate a better idea of the entire situation. Therefore, the IO should take as many photographs of the

crime scene and al other items that he considers important for the investigation of the case. Photographs wil provide a permanent record of the scene in its original position.

The fol owing photographs should preferably be taken:

Photographs of dead body:

1. Two or three photographs of the face from different angles.

2. Photographs of full body.

3. Long shots and close up shots.

4. Close up shots of al the wounds.

5. Photographs of al the items belonging to the deceased.

6. Photographs of the crime scene along with the dead body.

7. Specific positions of limbs.

Other photographs:

Photographs of the room or place where the body was found.

Photographs of the entire house, building or apartment.

In the case of an open area, the background and surrounding should be

photographed.

Long shots and close up shots of all the potential evidence must be taken from

different angles.

Photographs of holes made by gunshots.

Photographs of entry and exit routes.

Photographs of al the impressions left by the offender

Examination of the

The IO per Police Rule 25.33 must examine the dead body. The IO shal record his

dead body

observations carefully on the Inquest Report in Form 25.35422, which shal accompany the dead body.

The police should ensure that the dead body is sprinkled with Formalin diluted to 10 per cent and shal also be used with a strong solution of chloride of lime in water. If the body is to be taken somewhere far, the police should sprinkle dry powder of chloride of lime or with carbolic powder sold commercial y in tin boxes with a perforated lid special y

constructed for sprinkling purpose. The use of powdered charcoal is prohibited, as the

stains caused thereby may complicate the task of the post-mortem examination. The

dead body should be protected from exposure to weather, and the dead body should be

sent for the post mortem examination along with any bodily fluids and secretions under

the directions of the IO as soon as possible.

Post-mortem Report Medical jurisprudence is the application of medical knowledge in the legal field. Medico-by the Medico-Legal legal cases involving death, rape, assault, disability by accident, paternity etc. require a **Officer (MLO)423**

medical practitioner to produce evidence and appear as an expert witness in the court of law.

Medico- legal evidence involves col ection and analysis of medical evidence (samples) to produce objective information for use in the court Medico-legal evidence includes

fol owing:

1. Post Mortem Report by MLO under Section 174 of the Cr.P.C. where the MLO

performs an autopsy/post-mortem examinations to determine the cause of

death. The autopsy report contains information on: how the death occurred;

what was the manner of death (homicide, accidental, natural, suicide or

undetermined); time since death; and, the identity of the deceased. The IO is

required to get the report of the post-mortem examination from the MLO. Only

the MLO can establish the cause of death of the victim which would later be

admissible as evidence in the court of law. The MLO is bound to give findings of

post mortem examination as per the requirement of the Police Rule 25.47. 424 If the MLO considers any material to be sent to the chemical examiner for testing,

he may place it in sealed containers and make a note on the back of the post-

mortem report. It may be particularly important in poisoning cases to send

samples or the whole of stomach, intestines etc to the chemical examiner for

analysis.

422 Annexure I

423 For a sample Memorandum of Post-Mortem see Annexure II

424 **25.47. Report of medical officer. -** *(1) The medical officer having completed his ex- amination of the person, body, or article shall record in full the result arrived at, and, in the case of a post-mortem examination, his*

opinion as to the cause of death. He shal also record a list of any articles which he may intend to send to the Chemical Examiner. The repot shall be written on the back of, or attached to form 25.39(1) and shall contain such reference to the person or object examined as wil leave no possible doubt as to which case the remarks apply.

(2) The report shall be placed with the police file of the case and may be used by the medical officer to refresh his memory when giving evidence.

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2. Report by Medical Board (MLO, Police Surgeon and Forensic Expert) under Section 176 of the Cr.P.C. in custodial deaths, exhumations and high profile

cases.

3. Medico Legal Certificate.

Estimating Time of

The time of death is important in linking a suspect with the crime. Estimating the time of **Death**

death also helps the police in preparing a list of suspects who could be present on the

scene at that time, or it could help in determining the truthfulness of the alibi plea taken up by any of the suspects.

Investigation cannot be postponed until the opinion of the MLO is received, as time is of the essence in many cases. The IO must be capable of ascertaining the approximate time

of death during his examination of the body so that he may be able to quickly narrow

down the list of possible suspects and focus the investigation in the direction of those who are likelier to have committed the offence. The police officer is

not expected to

possess knowledge of an expert but must have some basic knowledge of the changes that

occur in a human body after death.

The IO can estimate the time of death by noticing these four basic changes occurring in the human body after death, while the MLO can only identify the fifth one during the

autopsy.

i. *Algor Mortis:* After death, the body starts to cool down until it attains the temperature of the environment. The body takes 20-30 hours to cool.

ii. *Rigor Mortis:* Stiffening of the muscles of the dead body fol owing the period of primary relaxation after death. If the muscles are relaxed and the body is

warm, the death is recent between 1-2 hours. Rigor Mortis starts developing

after 2-3 hours of death and develops completely after 12 hours. It persists for

another 12 hours and then begins to dissipate.

iii. *Lividity Mortis:* Heart stops pumping, the blood in the body starts settling to the lower side of the body due to gravity. Lividity starts after 30 minutes and

develops fully in 8 hours. The colour of the blood changes from bright to dark

red and consequently dark patches appear on the lower part of the body. Time

is calculated by observing the intensity of the colour of patches. If the body has

moved in 1-2 hours, the location and pattern of patches wil change. If the body

has not moved then mottled patches appear in 1-3 hours, blogger patches in

next 3-6 hours and fully developed discolouration.

iv. *Putrefaction:* If large maggots appear on the body, it may be 2-3 days old, and if smal maggots are noticed, the body may be 2-3 days old.

v. *Stomach contents:* The condition of food contents in the stomach gives a fair idea about the interval between eating food and death.

Handing over the

The family of the deceased are usual y very anxious to receive the dead body as soon as **dead body**

possible and Islamic customs also prescribe prompt burial of deceased. The IO must resist such pressures while also ensuring that the process of post-mortem examination can be

managed as quickly as possible so that the family of the deceased does not suffer further 253

pain. The procedure of handing over a dead body is stipulated under the Police Rules 25.37(6) which states:

"As soon as the district health officer has intimated that his examination is

complete, the police shall, unless they have received orders from a

competent authority to the contrary make over the body to the deceased's

relatives or friends, or if they decline to receive it, the police shall cause the

body to be buried or burned according to the rules framed in this behalf by

the district magistrate."

If an unidentified body is found, then fingerprints should be taken and sent to NADRA for verification. However, if the family approaches and suspects from clothing, jewellery or other marks that the deceased might be there missing one, then DNA tests can also be

conducted for further verification.

Dispatch of Articles

The fol owing rules shal be observed when packing articles and sending them for

for Chemical

chemical examination:

Examination

• Liquids, vomit, excrement etc, shal be placed in clean wide-mouthed bottles or jars, the stoppers or corks of which shal be tied down with bladder, leather or cloth, the

knots of the cord being sealed with the seal of the police officer, making the

investigation. Such bottles or jars shal be tested, by inverting them for a few minutes, to see whether they leak or not.

• Supposed medicines or poisons, being dry substances, shal be similarly tied down in jars or made-up into sealed parcels.

• Al exhibits suspected to contain stains should be thoroughly dry before being packed and dispatching for examination. The safest way of drying exhibits is to expose them

to normal room temperature. In cases of exhibits that become brittle on drying, they

should be carefully packed in cotton wool and then in a wooden box.

• Bloodstained weapons, articles or clothes, shall be marked with a seal and made-up

into sealed parcels. The entire article should be sent.

• Sharp-edged and pointed exhibits like swords, spears, etc. should be packed in boxes and not bind up into cloth packages.

• On each bottle, jar and parcel, and on each article or set of articles contained therein, must contain separate identification affixed with a label describing the contents,

giving ful particulars and stating where each article was found.

• The suspected organs and other exhibits should be placed in a clean glass bottle or

jar having a good fitting stopper or cork.

• Materials that are liable to decompose should be preserved by one of the fol owing

methods:

i. In cases of suspected human poisoning other than alcohol, phosphorous carbolic acid and some of the lesser-known volatile poisons, the material sent should be

immersed in rectified spirit. A separate four-ounce bottle of the rectified spirit

should be sent for independent analysis as a control.

ii. A salt solution made by adding a full tablespoon of salt to about a pint of fresh, clean water. A separate four-ounce bottle of this salt solution should be sent for

independent analysis as a control.

a) In homicide by poisoning cases, the fol owing articles must always be sent to the chemical analyst:

• Stomach with contents should be securely tied at both ends.

• A piece of the smal intestine (about 3 feet) securely tied at both ends.

• A portion of the liver (not less than 16 ounces), one kidney and a piece of the

spleen.

• Stomach contents, urine and intestinal contents should be preserved

after post mortem for toxicological analysis.

• Suspected food eaten by the victim.

• Any crockery used by the victim,

• A sample of the preservative fluid used to act as control sample.

Moreover, the post mortem report should also accompany the articles and the post

mortem report must include details regarding date and hour of the onset of symptoms

and the date and hour of the death.

Similarly, a copy of the Inquest report prepared on Form 25.35 of the Police Rules425

should also be dispatched to the chemical examiner.

Where death occurs after arrival at the hospital, the details of symptoms observed by the Medico-Legal Officer, details of nature and duration of

treatment given by the hospital staff or persons who rendered first aid should also be provided to the chemical examiner.

IX. ANALYSIS OF POST-MORTEM REPORTS

Post-Mortem reports prepared by medico-legal experts are the conclusive finding on cause of death.

Notwithstanding, the investigating officer is expected to be able to form an opinion on cause of death and the time of death—in order to be able proceed with the investigation—without having to wait for the medical expert to have performed the autopsy and issue his/her findings.

In this respect, the investigator must be mindful of the fol owing:

ASPECTS TO BE

DESCRIPTION

ANALYSED FROM

THE POST-

MORTEM REPORT

Corroboration with The IO must ascertain whether the injuries mentioned by the MLO correspond to the **the inquest report**

statement of injuries prepared by him in Form No 25.35. 426 In case the inquest report and the post-mortem report do not correspond, the IO should find out the reasons and

mention them in the statement of inquiries.

Corroboration with The IO must also ascertain whether the injuries mentioned by the MLO correspond to the **ocular testimony**

eye witness accounts of the event. In the event that there is a contradiction between the 425 Annexure I

post-mortem report and the accounts of one or more witnesses, the investigating officer should consider whether there is a genuine mistake on the part of the witnesses or

whether the witnesses are not reliable.

Nature and Cause

1. Type of weapon that was used to cause the injuries e.g. Firearm, Axe, Knife.

of Injuries

2. How the weapon was used to cause injury e.g. stab or incised wound with sharp

weapon.

3. Whether there is evidence of resistance or struggle.

4. Whether there are any marks indicating use of force upon the deceased.

5. Whether there are skin fragments under the victim’s nails.

6. Whether there are any marks of scratching or biting upon the person of the accused.

Number of

1. Whether the victim was overpowered by numerical y greater adversaries

assailants

2. Whether different weapons were used in the commission of offence

Cause of death

1. Whether by firearm injury, incised wound, blunt force trauma, poisoning,

asphyxiation, dropping from height etc.

2. What kind of force was used on the body?

3. If multiple injuries: the significance of each in causing death.

Time of death

Post-mortem reports provide the most accurate estimate of the time of death. This is very useful in narrowing down the range of suspects who could have been at the scene of the

crime when used in conjunction with cal data records and any evidence of last seen or

other circumstantial evidence. It also helps verify any alibi plea taken up by a suspect and also to gauge whether a witness is truthful about his presence at the scene of the crime at the time of death.

In case of firearm

Post-mortem reports can often offer clearer estimates of distance of fire shot than site **injury, the distance** plans which in the absence of ocular testimony would rely solely on where the firearm **from which the**

empties were found in relation to the dead body. This information is very important in

shot was fired

terms of not only ruling out the possibility of suicide but also to provide insight into whether the suspect may be someone close to the victim and capable of easy access to

him/her.

In cases of

1. Presence of alcohol or any other drug in the blood.

ingesting foreign

2. Level of toxicity of foreign substance.

substance

3. Type of poison (in poisoning cases).

4. Whether external examination corresponds with that poison or toxin.

5. State of internal organs if any affected by that substance.

Ultimately, the investigating officer has to be able to explain any lack of correspondence between the medical/chemical examiner’s reports and the other evidence col ected during the course of investigation including but not limited to the witness statements and physical or trace evidence. In case the same do not correspond, the investigating has to be able to identify why that is the case. This lack of correspondence may be due to a number of factors including: contamination of the crime scene; faulty or blatantly untrue eye witness statements; lack of competence or deliberate inclination of the medical examiner etc. In certain cases, the defects can be remedied by having a medical board constituted to re-evaluate the medical evidence; causing exhumation of the dead body; further interviews of witnesses; and by recording their supplementary statements to explain the missing details etc.

X. DYING DECLARATIONS AND THEIR RELEVANCE TO HOMICIDE CASES

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In addition to the types of evidence elaborated upon in Chapter X, the dying declaration requires a specific discussion in the context of homicide. A dying declaration becomes relevant in cases where information relating to a murderous assault is received and the victim is alive, the investigating should promptly proceed to the hospital and if the victim is lucid and conscious, ask him about the identity of the assailant. The information thus

disclosed prior to death is known as a dying declaration. This is admissible in court even though the maker of this statement does not appear in court to lead evidence. The witnesses who hear the statement can depose evidence of it and this is within one of the recognized exceptions to the hearsay rule. The procedure to be fol owed when recording dying declarations is detailed in Rule 25.21 of the Police Rules which is reproduced as fol ows:

25-21. Dying declaration:-

(1) A dying declaration shall, whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shall, id possible be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no magistrate can obtained, the obtained, the declaration shall, when a gazetted police officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

(4) If no such witnesses can obtained, without risk of the injured person dying before his statement can be recorded, it shall be recorded in the presence of two or more police officers.

(5) A dying declaration made to a police officer should, under section 162, Code Criminal Procedure, be signed by the person making it.

XI. APPRAISAL OF EVIDENCE IN HOMICIDE CASES PRIOR TO THE FINAL REPORT U/S 173 CR.P.C.

Prior to the preparation of the final report u/s 173 Cr.P.C, the investigating officer must be able to appraise al of the evidence col ected up until that point and be able to piece it together and draw a conclusion as to the involvement of the suspect in the al eged offence. Certain questions must be answered before this conclusion can be drawn. Below are some of them:

1. Whether the suspect’s presence at the place of occurrence at the relevant time proven through witnesses, documentary evidence or other

circumstantial evidence?

2. Whether there is sufficient evidence to show that the suspect has caused the death of the victim by any voluntary act/omission?

3. Whether al of the evidence col ected during the course of investigation is reliable, admissible and consistent with each other? This is particularly crucial in the case of ocular testimony/eyewitness account and medical evidence.

4. Whether the accused had the relevant state of mind for the category of criminal homicide charged? The required mens rea for murder (qatl-e-amd) is intention to kil . If there is absence of intention, the murder charge wil fail.

5. Whether there is motive for the commission of homicide on the part of accused? In the absence of motive, the prosecution version would be very weak and not confidence inspiring.

XII. CHECKLIST FOR DOCUMENTS TO BE ANNEXED WITH THE CHALLAN U/S 173 CR.P.C. IN HOMICIDE CASES: S. NO

ACTION

YES

NO

NOT APPLICABLE

1.

Copy of complaint/istighasa

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2.

Copy of FIR

3.

Site plan

4.

Memo of search of place of occurrence

5.

Statements recorded u/s 161 Cr.P.C

6.

Statements recorded u/s 164 Cr.P.C

7.

Remand requests and orders thereupon

8.

Memo of Identification Parade

9.

Recorded Dying declaration

10.

Memos of arrest, search, recovery

11.

Any record obtained about prior convictions and other

particulars of accused

12.

Inquest report

13.

Post-mortem report

14.

Reports from experts e.g. chemical examiner, serologist,

bal istics, forensic etc.

15.

Permission to prosecute

16.

Corroboratory evidence e.g. CDR, photographs, CCTV

recordings etc.

XIII. CHECKLIST FOR MURDER INVESTIGATIONS:

S. NO	ACTION	YES	NO	NOT APPLICABLE
1.	Reach the place of occurrence and begin recording statements of witnesses present at the spot.			
2.	Conduct detailed site inspection.			
3.	Have photographs taken of the place of occurrence.			
4.	Record the statement of the photographer u/s 161 Cr.P.C. on the spot.			
5.	If any blood is found at the spot, collect the same with a small piece of cotton and prepare a sealed parcel of it at the spot for transmission to forensic experts.			

6.

If firearm empties are present at the site, take them into custody and prepare parcel for transmission to forensic experts.

7.

Col ect finger prints, hair fibre or other trace evidence from the spot.

8.

If shoe prints are found at the spot, prepare moulds of the same.

9.

Prepare recovery memo signed by witnesses and record the statements of witnesses u/s 161 Cr.P.C.

10.

Record the position of the body and take measurements of the body with reference to the place of occurrence.

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11.

Prepare site plan with detailed description in red ink of where the dead body, firearm empties, weapon of offence etc are

present. Also mention any points of entry and exit.

12.

Have a scaled site plan prepared from draftsman or in the case of vil age or open lands from the patwari.

13.

Prepare Inquest report in accordance with S.174 Cr.P.C on Form 25.35 of Police Rules. 427

14.

Recover any documents which may be in possession of the victim.

15.

Dispatch dead body for post-mortem examination.

16.

Receive last worn clothes of the deceased and prepare parcel for transmission to chemical examiner/forensic expert as the case may be.

17.

If the medical officer has given some parcel of specimens taken from the deceased during post-mortem, dispatch them to the forensic experts for analysis.

18.

Prepare memo of recovery of last worn clothes of the deceased.

19.

Receive report of post-mortem from the medical examiner. At this point if there are any questions, queries or doubts they should be discussed with the medical examiner and clarity must be sought.

20.

Obtain CCTV footage from all available cameras in the vicinity.

21.

Recover murder weapon.

22.

Prepare memo of recovery of weapon.

23.

Dispatch weapon in a sealed parcel to forensic experts.

24.

Investigate motive for the murder and underlying conditions e.g. enmity, disputes etc.

25.

In case victim received threats prior to the occurrence;

obtain CDR records.

26.

If necessary, take mobile phone, personal computer of victim

into custody.

27.

Affect the arrest of suspect and prepare memo of arrest.

28.

Recover personal effects of the arrested suspects and

prepare memo of recovery.

29.

Seek physical remand of the accused from the concerned

magistrate if required for further investigation.

30.

Interrogate the accused with regard to recovery of weapon

used during the commission of offence.

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31.

If weapon of offence is recovered have it dispatched to the forensic experts for comparison to firearm empties or other physical evidence as applicable.

32.

Never keep recovered weapon and firearm empties obtained from the spot in the Malkhana at the same time.

33.

Match the fingerprints, blood or other trace evidence earlier recovered from the spot with specimens taken from the suspect.

34.

Enter the particulars of recovered articles in Register No.19.

35.

Record statements u/s 161 Cr.P.C of persons transmitting parcels for analysis and Moharrar.

36.

Record statements u/s 161 Cr.P.C of persons who identified dead body.

37.

Obtain any video recordings of offence or attending

circumstances made by any person and record the statement u/s 161 Cr.P.C of the maker.

38.

Obtain information and particulars of any vehicle used during the commission of the offence.

39.

If there is any prior record connected with the accused or the occurrence, attach it with the police file.

40.

In the event the suspects have absconded bring their CNIC numbers on record and proceed with obtaining their proclamations and if necessary putting their names on the ECL.

41.

If the suspect is believed to be present within the territorial limits of another police station, inform the S.H.O of that police station and provide complete particulars of the suspect.

42.

Make entry in daily diary (Zimni) each time the case record is

presented before any court during the course of

investigation. Also make an entry in the daily diary when final

report u/s 173 Cr.P.C is submitted in court.

43.

Prepare final report u/s 173 Cr.P.C in accordance with the

Form No. 25.57 provided in the Police Rules. 428

XIV. CHECKLIST FOR ATTEMPTED MURDER INVESTIGATION

S. No

Action

Yes

No

Not Applicable

1. Reach the place of occurrence and begin recording

statements of witnesses/injured persons present at the spot.

2. Conduct detailed site inspection.

3. Have photographs taken of the place of occurrence.

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4. Record the statement of the photographer u/s 161 Cr.P.C. on

the spot.

5. Col ect finger prints, hair fibre or other trace evidence from the spot.

6. If any blood is found at the spot, collect the same with a small piece of cotton and prepare a sealed parcel of it at the spot for transmission to forensic experts.

7. If shoe prints are found at the spot, prepare moulds for the same.

8. If any injured person is taken to hospital record his statement preferably in the presence of a medical professional.

9. If firearm empties are present at the site, take them into custody and prepare parcel for transmission to forensic experts.

10. Prepare recovery memo signed by witnesses and record the statements of witnesses u/s 161 Cr.P.C.

11. Prepare site plan with detailed description in red ink of where the suspect was and where the intended victim(s) was present, where firearm empties were found and location of weapon of offence if found present. Also mention any points of entry and exit.

12. Have a scaled site plan prepared from draftsman or in the

case of vil age or open lands from the patwari.

13. Investigate motive for the attempt to commit murder and underlying conditions e.g. enmity, disputes etc.

14. Have the injured persons, if any, medical y examined in your presence by medical examiner authorized to carry out medico-legal examinations.

15. Obtain Medico-Legal report of injured persons if any. If necessary discuss with medical examiner whether the type of injury intended to the victim was one which could ordinarily cause death.

16. Affect the arrest of the suspect and prepare memo of arrest.

17. Search the suspect and recover personal items and prepare memo of recovery.

18. Interrogate the accused with regard to recovery of weapon used during the commission of offence.

19. If weapon of offence is recovered have it dispatched to the forensic experts for comparison to firearm empties or other physical evidence as applicable.

20. Never keep recovered weapon and firearm empties obtained from the spot in the Malkhana at the same time.

21. Obtain CCTV footage from al available cameras in the vicinity

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22. Obtain information and particulars of any vehicle used during the commission of the offence.

23. Obtain information of any prior criminal record of the

suspect.

2. VIOLENCE AGAINST WOMEN

I. LIST OF IMPORTANT OFFENCES SPECIFIC TO VIOLENCE AGAINST WOMEN UNDER THE PPC

1. Punishment for giving a female in marriage or otherwise in badal-i-sulh, wani or swara (Section 310-A PPC) 2. Hurt caused by corrosive substance (Section 336-A PPC)

3. Assault or use of criminal force to woman and stripping her of her clothes (Section 354-A PPC) 4. Kidnapping, abducting or inducing woman to compel for marriage etc. (365-B PPC)

5. Procreation of minor girl (Section 366-A PPC)

6. Kidnapping or abducting in order to subject person to unnatural lust (Section 367-A PPC) 7. Sel ing person for purposes of prostitution etc. (Section 371-A PPC)

8. Buying person for purpose of prostitution etc. (Section 371-B PPC)

9. Rape (Section 375 PPC)

10. Unnatural Offences (Section 377 PPC)

11. Sexual Abuse (Section 377-A PPC)

12. Cohabitation caused by a man deceitful y inducing a belief of lawful marriage (Section 493-A PPC) 13. Enticing or taking away or detaining with criminal intent a woman (Section 496-A PPC) 14. Prohibition of Forced Marriage (Section 498-B)

15. Insulting modesty or causing sexual harassment (Section 509 PPC)

II. HONOUR KILLINGS

Honour kil ings are nothing but murders with certain motives. Therefore, the investigation of honour kil ing cases should be done on the same lines and procedures as that of an investigation in Homicide cases, discussed above.

That being said, there are some additional factors that an investigator needs to be mindful of when investigating these offences. The same are discussed in this section.

Important point:

Motive of honour kil ing should be mentioned while recording FIR. When the motive is disclosed during the course of investigation, it should be specifical y mentioned.

III. SPECIFIC ACTIONS BY THE IO TO BE TAKEN IN CASES OF HONOUR CRIMES

1. In honour kil ing cases, the accused may have surrendered before the police and given his version of the incident. Before IO visits the scene, he should be mindful of the version narrated by the accused and should assess the crime scene accordingly.

2. When the offender surrenders or is apprehended (which occurs at the initial state in honour kil ing), the body and clothing of the offender should be searched and preserved whenever blood or trace evidence is found on the clothing.

3. Forensic evidence col ected from the scene or offender’s body should be promptly sent for expert opinion.

4. IO should not confine investigation around the single accused but go deeper into the entire circumstances of the case to find abettors and facilitators.

5. IO should not depend upon the witnesses provided by the family who may be near relatives or friends. Some of them may be accomplice to the crime. He must look for other witnesses according to circumstances of the case.

6. IO should gather intel igence whether any sort of Jirga was held to declare the victims as Karo or Kari or whether there were informal consultations among the family members regarding the dishonour brought to the family.

7. In situations where family declines to peruse the investigation as a result of compromise, the IO should never accept the compromise or dilute the investigation. Entire process should be completed with in-depth investigation. The law does not permit compounding of such cases by police.

IV. SEXUAL ASSAULT CASES

Sexual assault cases are reported general y under the fol owing categories:

1. Rape/Gang Rape

2. Outraging modesty of a woman and acts of public humiliation

3. Sexual harassment

In dealing with these cases, the SHO must ensure that proper penal sections are applied in each category of offence so that the investigation proceeds on the right lines from the beginning. Accordingly, the IOs must develop a sound understanding, go through these laws and understand the ingredients to be able to apply them to the situations before them.

V. GUIDELINES FOR INVESTIGATION OF SEXUAL OFFENCES

PHASE OF THE

STEPS TO BE TAKEN

INVESTIGATION

Preservation of the

First responder to the sexual offence may not be the IO so main responsibility of first **Crime Scene**

responder is to preserve the crime scene and secure the evidence present on the

scene so that it can be col ected, analyzed and produced before the court.

Visit of the Crime Scene Carry out search of the crime scene and special attention should be paid to the fol owing points:

1. Sings of struggle present at the scene.

2. Presence of impressions, finger or footprints.

3. In outdoor scene, body imprints like knee and elbow marks in sand or soil.

4. Presence of portions of torn clothes, fragments of textile fiber, buttons, etc.

5. Presence of semen, blood or vomitus.

6. Samples of fibers, dirt, sand, earth and vegetation col ected from the scene

for comparison with similar materials on the clothes of the criminal and the

victim.

7. Bedcovers, mats, gunny bag, seat covers of a vehicle, etc. if found on the

scene to be sent for laboratory examination.

Vital Sources of

Other than the crime scene, the fol owing sources wil provide the most vital piece

Evidence

of evidence:

1. Victim

2. Suspect

It is important that search of bodies/clothes of the victim and the suspect/s is

conducted at the first opportunity and evidence/articles sized properly for further

analysis. The fol owing evidence can be obtained:

1. Clothes of the victim and suspect for detection of semen.

2. Clothes can also provide other evidence such as blood, hair, fiber and

materials transferred mutual y or from the scene of crime.

3. Other apparel like towel, handkerchief, tissue papers, dusters which may

have been used before, during or after the assault and contain valuable

traces of evidence.

4. Timing is crucial in gathering evidence from suspect and victim. Evidence

may be destroyed after washing the clothes or taking a bath.

Medical Evidence

The medical evidence provided by the MLO is critical in sexual assault cases, and

medical examination of the victim should only be done by a medico-legal officer

according to the provisions of the Police Rules 25.22 read with Section 164-A and

164-B of the Cr.P.C.

Interviewing Victims of

Interview of the victim in sexual assault cases is a very sensitive issue and requires

Sexual Assault

specialized training. Efforts should be made to procure the services of a trained

female interviewer though supervisory officers:

1. The place where interview takes place should be free from distractions as

much as possible. Ensure both visual and auditory privacy.

2. If there is a genuine requirement, a part of interview may take place at the

scene of the offence, to facilitate the interviewee and to reconstruct the

details of the incident.

3. Prior to the interview, consideration should be given to the mental and

physical state of both the victim and witnesses.

4. The initial part of the interview should be used to relax the victim as much

possible and the victim/witness should feel that they are in a safe

environment.

5. Police jargon and unfamiliar words should be avoided.

6. Asking questions about one subject and moving to the next question relating

to a completely different subject should be avoided.

7. When closing the interview, the victim/witness should be thanked for her

contribution.

Evaluation of Evidence

1. Ensure that the correct offence(s) is applied.

2. Whether the evidence fulfils the standard of Hadd (if applicable)

3. Is there any contradiction in the witness statements? If so, steps are taken

to rectify or justify the same.

4. Whether the report of MLO and other laboratory reports, support the allegations of rape.

5. Whether forensic evidences link the accused with the offence is available.

6. Whether the experts report, tal y with other evidence and prosecution

story.

7. Scrutinize the case file to ensure that al memos and other documents are

prepared as per legal requirement.

8. Prepare final report for submission before the court as per requirement of

section 173 of Cr.P.C.

3. THEFT

I. THEFT AS DEFINED UNDER THE PPC

Section 378 to 382 of the PPC deal with the offences of theft/burglary. In particular, Section 378 of the PPC defines theft as fol ows:

‘Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to such taking is said to commit theft.’

Accordingly, the fol owing ingredients must be established to prosecute theft:

1. Taking of a movable property intentionally;

2. Moving that property in order to effect the taking of such property;

3. Intention equating to dishonesty;

4. Taking the property out of the possession of someone; and

5. Without the consent of such person.

Additional y, it is important to highlight that the offence under Section 411 of the Cr.P.C.—dishonestly retaining property—and theft are the same. Therefore, an accused who may be convicted under the offence of theft must not be convicted separately under Section 411 of the Cr.P.C. It is often observed that the sole evidence against the accused, in a theft case, is the recovery of stolen property from his possession. However, of itself this is not sufficient to prove the offence of theft. It is in such circumstances that Section 411 of the PPC comes into play and can help in securing a conviction for the offence of retaining stolen property.

II. REPORTING OF THEFT INCIDENTS

Unlike homicide incidents, where information may be received at the police station through different means, the incidents of theft are mostly reported by the victim at the police station. FIR is mostly recorded at the police station

before visiting the scene of crime. The fol owing facts should be recorded in the FIR:

1. Brief description of property.

2. Approximate value of property.

3. Identification features of property stolen.

4. Property was secured in a Hirz. 429

5. Proof of ownership of property.

429 An arrangement made for the custody of property.

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FIR should not be delayed when these details are not immediately available and should be recorded on the basis of available information. However, detailed list of stolen property and identification features should be mentioned in the first case diary.

III. VISITING SCENE OF THEFT

Scene of theft presents a different picture than a homicide scene. Theft scene is likely to be quiet, without crowd or hostility. The investigator must ensure himself that the evidence is neither contaminated nor destroyed. While proceeding further, the investigator should be guided by fol owing questions in mind:

1. How did the thief make his entry and exit from the scene?

2. Was some insider involved in facilitating the offence or committing the offence?

3. At what time the offence was committed and who could know that this was the most suitable time?

4. How did the thief know where to find the most valuable property?

5. What was the modus operandi of the offence? Does it appear to be job of an amateur or of an experienced thief?

6. Whether, other offences have occurred in the locality using the same technique

7. What type pf property was targeted? Whether, it required special arrangements for carrying 8. Any other query might arise after having a look at the scene?

In theft of al types, the study and ascertainment of modus operandi is the key to a successful investigation. The modus operandi wil lead the investigator in determining a suspect group immediately or provide data for detecting the theft in future when some suspects applying the same technique are apprehended.

The Investigating Officer is required to conduct the fol owing functions at the crime scene: PHASE OF THE

STEPS TO BE TAKEN

CRIME SCENE

Photography

He should conduct photography of the scene that should cover the fol owing points:

1. Place from where entry was made

2. Technique used to gained entry, i.e. hole in the wal breaking gril

3. Photographs of targeted furniture i.e. almirahs, drawers, safe, etc.

4. Long shots and close shots of location to show technique employed to open

containers

5. Photographs to depict modus operandi

6. Photography should be conducted prior to holding any other investigation.

Inspection note of

Detailed discussions have been done for writing inspection note in the chapter of visiting **the Scene**

homicide scene. Basic principles of writing inspection note of theft scene are same.

However, in a theft scene, emphasis must be given to modus operandi used by the

criminals. Instructions given in Appendix no. 21.35(2) of Police Rules concerning the

examination of scene of thefts and burglars should be fol owed whenever required.

Sketch of the Scene Prepare sketch of the scene prior to conducting scene investigation. Prepare sketch according to suitable scale, which shows al evidence present at the scene.

Search of Theft Before making a search, look for presence of impressions i.e. footprints, fingerprints, etc.

Scene

Priority should be given to lifting of latent prints. After conducting search of immediate vicinity, the peripheral area including entry and exit points should be searched.

IV. DETERMINING THE MODUS OPERANDI

Every experienced investigator tends to keep noting points throughout the scene of the investigation which can point to the technique employed by the thieves of committing the offence. A number of facts wil guide him to determine the modus operandi. For example, the place selected to gain entry, techniques employed to make entry, tools used for opening drawers, how much time spent at the scene, etc.

Detailed instructions for examination of scene of theft and burglary have been given in Police Rules. Similarly, modus operandi forms are also given which too are prepared by the investigator at the scene and sent to criminal record office of the district.

Appendix No. 21.35(2) of the Police Rules, 1934

INSTRUCTIONS CONCERNING THE EXAMINATIONS OF SCENES OF THEFTS AND BURGLARIES AND PARTICULARS

REQUIRED TO BE SUB- MITTED IN THE CASE OF ALL SUCH OFFENCES TO THE CENTRAL INVESTIGATION AGENCY.

The scenes of all offences under Chapter 17, Pakistan Penal Code shall be most carefully examined as soon as possible, by the investigating officer who, in cases of theft (except cattle theft) and burglary, shall attach a separate site inspection report with the first case diary irrespective of the fact whether the accused are known, unknown, arrested or at large. This site inspection report on arrival at headquarters shall be passed on without de-lay to the Central Investigating Agency.

In the case of offences against property, other than theft and burglary, no site inspection report need be prepared unless the scene of the offence presents such peculiarities as make such a report desirable or unless a report is called for by the officer in charge of the Central Investigating Agency.

The object of a site inspection report is (a) to enable other officers who have not been to the spot to visualise the scene, (b) to permit of an intelligent study of the ways and methods of the particular criminal by the Central Investigating Agency, (c) to enable the Central Investigating Agency from

their records of individual criminals to suggest identity of the accused responsible for the particular case under investigation. Obviously, therefore, every site inspection report must be intelligently and carefully compiled after a deliberate study of the scene. A list of points that should find mention in site inspection reports is given below, but the list is by no means exhaustive and is entered merely as a guide.

A. - Burglaries of all kinds

1. Number of the First Information Report; date; section of the offence; police station and district.

2. Time and date of (a) occurrence, (b) report to the police.

3. Special circumstances, if any, concerning the time and date of occurrence (e.g., fair, festival, or evening meals, etc., etc.).

4. Place of occurrence, with distance and direction from (a) police station, (b) rail- way station, and (c) main road.

5. Nature of locality (i.e., dwelling house, office, mosque shop, etc., etc.) and its relation to the rest of the vil age or town.

6. Name, address, profession and status of the complainant.

7. Class of property attached.

8. Class of property removed.

9. Number of rooms entered by the accused and whether or not they were occupied at the time.

10. Whether or not property was removed from the particular rooms to which the accused first gained admittance.

11. Any clue left to indicate whether the accused worked in the dark or by means of a light.

12. Particulars of any belongings of the accused left by him on the spot.

13. Any boxes, safes, almirahs, etc., etc. containing articles of value overlooked by the accused and not touched by him and if so their locality.

14. Precautions, if any, adopted by the accused during the commission of the offence to guard against surprise (such as chaining of door, etc.).

15. When property removed was last seen at the place from which it was stolen.

16. Finger-prints.-Descriptionoftracesoffinger-printsfound,theirexactposition and steps taken for their preservation, development, photograph, transfer, identification, etc.

17. Foot-prints. - (1) Number of foot-prints found, (a) leading to the spot, (b) on the spot, (c) leading from the spot and deduction therefrom as to the number of culprits involved, (2) Direction from which the accused came and direction in which they went, (3) Distance to which tracks leading (a) to and (b) from the scene were fol owed, (4) Measurements (in inches) of individual foot-prints, (5) Precautions, if any, adopted by the accused to conceal their foot-prints, (6) Whether moulds, etc., taken or not and, in latter case reason for failure to do so.

18. Opinion as to whether accused were expert or amateurs and class of society to which they belonged and reasons, in support thereof.

19. Means of transport, if any, employed by the accused for the removal of property.

20. Any other clues or matters of importance requiring mention.

IF ADMITTANCE OF THE HOUSE OBTAINED BY MEANS OF A HOLE IN THE WALL.

21. Condition of the wall (kacha, pacca, burnt bricks, stone, etc.)

22. The exact situation of the hold and its relative position, with regard to doors, windows, ventilators, etc.

23. Shape of the hole (il ustrate by diagram).

24. Height of the base of the hold from the ground (a) outside, and (b) inside.

25. Exact measurements (in inches and not in ungals or other such unauthorised measurements) of the hole (a) outside, and (b) inside,

26. Thickness of the wall where hole made.

27. Side to which excavated earth was thrown.

28. Details of marks left by instrument used and inference drawn therefrom as to the nature of the instrument.

29. Whether room in which hole was made was occupied or not at the time.

IF ADMITTANCE WAS OBTAINED BY LOCK BREAKING OR LOCK OPENING

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30. Type of lock broken.

31. If opened by key any indication as to whether key used was (a) the original one and if so how accused obtained possession of it, (b) duplicate, (c) skeleton or false.

32. If lock forced (a) give particulars of marks on it and inference drawn therefrom as to the instrument used, and (b) state if lock is stil in working order.

33. If lock intact and hasp or chain wrenched out, state the type of instrument that appears to have been used.

IF ADMITTANCE OBTAINED BY MEANS OF A HOLE IN ROOF.

34. The construction of the roof (whether kacha, pacca, thatched, etc., etc.).

35. Any indication as to how the accused ascended the roof.

36. Position of hole (whether of adjoining beam, in one corner, etc., etc.).

37. Whether room beneath was occupied or not.

38. Whether property was removed from the room in which hole was made.

39. Means employed by the accused to descend into the room below.

40. How earth removed was disposed of and precautions adopted by the accused to prevent earth from falling into the room below.

41. Any other matters of importance requiring special mention.

IF ADMITTANCE OBTAINED BY ANY WAY OTHER THAN THOSE MENTIONED ABOVE

42. How admittance was gained.

43. If admittance gained by closed windows or ventilators, give particulars to indicate how bars were forced or glasses broken and means adopted by accused for preventing noise.

44. If culprit scaled the wall (a) state means employed (i.e., rope, leather, bamboo, water pipe, etc.; (b) give particulars of marks, if any, left on the wall.

45. If admittance gained through a drain give dimensions and position with respect to the rest of the house.

46. If admittance gained through a chimney give similar particulars.

47. In case of admittance obtained by deceitful means, threat, force, etc., give de- tails of story told by suspect.

IN THE CASE OF DAY LIGHT BURGLARIES

48. State whereabouts of the owner of the time of the commission of offence.

49. Precautions, if any, taken, by the accused or his associates to divert the attention of neighbours away from the house attacked.

B. - Thefts of al kinds

The same particulars as for burglaries, where applicable, together with a brief report of the facts.

IN CASE OF PICK-POCKETING

1. Means employed by culprit (i.e., razor, blade, knife etc.)

2. The position of the picked pocket (waist-coat, inner pocket of coat, etc.) and its contents.

3. Position of other pockets and contents which were not touched.

4. Reasons, if any, for believing that the accused had associates.

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5. Means adopted to distract the attention of the victim.

A separate site inspection report shal be attached with the first case diary irrespective of the fact whether the accused are known, arrested or at large. The site inspection note on the arrival at headquarter shal be passed on immediately to the Central Intel igence Agency. The purpose of a site inspection report is: 1. To enable other officers who have not been to the spot to visualize the scene;

2. Permit an intel igent study of the ways and methods of the particular criminal by the Central Intel igence Agency; and

3. Enable the Central Intel igence Agency from their records of individuals to suggest identity of the accused responsible for the particular case under investigation.

Furthermore, it must also be realized that often thieves or burglars with the passage of time develops their own peculiar style or modus operandi for

committing thefts/burglaries. The data of modus operandi of each is stored in Criminal Record Office (CRO) of the district. The staff employed in CRO is wel trained in determining a particular modus operandi if previous burglaries committed in the district. When a burglar is arrested with a specific modus operandi, many previous burglaries with the same technique are most likely to detected. The role of the CRO can be effective only when every theft/burglary investigator conducts in depth scene investigations and provides minutest of details of each theft/burglary to CRO. The Modus Operandi forms concerning the examination of the scenes of thefts and burglaries and have been reproduced in Annexure IV to this Chapter. At the same time, it is also necessary for every investigator to visit the CRO and study the record of previous burglaries with the same style.

V. INTERVIEWING THE VICTIMS OR WITNESSES

Some of the areas about which questions may be asked by the investigator are as under:

1. Particulars of domestic servants and their visitors.

2. Socio-economic background of servants.

3. Did any visitor of servant have access to the rooms of the house that have been targeted?

4. Details of plumbers, electricians, carpenters, cable operators, telephone or internet technicians who have worked inside the house during the year.

5. Whether the servants have possession of keys? And if any keys of entrance been lost?

6. Servants who may have been dismissed previously.

7. Whether a stranger i.e. beggar, hawker, or children had been peeping in or were trying to have a look of the interior on one pretext or the other.

8. Whether some labourer had been sleeping in the premises of their work within the vicinity.

9. Every locality and scene wil raise many questions depending on how the burglary was committed.

Investigator should spend time to get every detail not only of the offence but also of what has been happening in the vicinity prior to the offence.

VI. TRACING SUSPECTS OF BURGLARY

When a list of suspect burglars is obtained with the help of CRO, the investigator is required to find out their present locations for apprehension and interrogation. This can be achieved through a number of ways some of which are as under:

1. Searching the last known address of each member (some may have changed address).

2. Search of house to recover stolen property.

3. Raids on places of associates of burglars.

4. Inquiries from relatives, friends.

5. Enquiries from receivers of previously disposed property.

6. Enquiries from members of the gang who are in jail.

7. Enquiries from other burglars in jail (criminals have latest information about activities of other groups even in jail).

VII. RECOVERY OF STOLEN PROPERTY

Stolen property may be recovered through a number of ways:

1. A suspect during interrogation may confess to the commission of an offence and recovery may be made on his pointation from a safe hideout.

2. Suspect may disclose names of persons to whom stolen property has been sold, leading to their places of residence or work.

3. Property may be recovered from search of these places.

4. Receiver of property may lead to other persons to whom property was sold and the chain continues until property is recovered. During this process it is likely that property of other theft cases may also be recovered.

5. Sometimes, persons with stolen property may be apprehended by patrol ing parties or at a *naka bandi* points.

6. Stolen property may be recovered from suspect hideouts or burglars or criminals during raids.

7. Final y, recovered stolen property should tal y with the description of property given in FIR or first case diary and legal process of identification b the owner must be held.

4. INGREDIENTS OF FREQUENTLY USED OFFENCES UNDER THE PAKISTAN PENAL CODE (PPC) 1860

The legal definitions of al crimes contain certain **ingredients/elements**. If the government cannot prove the existence of these elements, it cannot obtain a conviction in a court of law. Other elements are not part of al crimes, but are only found in crimes that prohibit a particular *harm*. Often, a difference in one particular element of a crime can distinguish it from another related offense, or a particular degree of the same offense. At common law, for example, manslaughter was distinguished from murder by the mental element of malice aforethought. Fol owing are the ingredients of frequently used offences.

Offence: Counterfeit

PPC Section No.:

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Essential ingredients:

Intent, Resemblance

Offence:

Abetment

PPC Section No.: 107

Essential ingredients:

Intent, Instigate, Conspiracy, Il egal Omission

Offence:

Criminal Conspiracy

PPC Section No.: 120 (A)

Essential ingredients:

Il egal act

Offence:

Give False evidence

PPC Section No.:

191

Essential ingredients:

Knowledge, False statement

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Offence:

Qatl-i-Amd

PPC Section No.: 300

Essential ingredients:

Intent, Knowledge

Offence:

Qatl-i-Khata

PPC Section No.: 318

Essential ingredients:

without any Intention, mistake

Offence:

Wrongful restraint

PPC Section No.: 339

Essential ingredients:

voluntarily obstructs

Offence:

wrongful confinement

PPC Section No.: 340

Essential ingredients:

wrongful y restrains

Offence:

Criminal Force

PPC Section No.: 350

Essential ingredients:

Intent, Force, Knowledge, Fear

Offence:

Assault

PPC Section No.: 351

Essential ingredients:

Intent, Gesture, Knowledge

Offence:

Kidnapping

PPC Section No.: 359

Essential ingredients:

Kidnapping of two kinds, Kidnapping from Pakistan and Kidnapping from lawful

guardianship

Offence:

Kidnapping from Pakistan

PPC Section No.: 360

Essential ingredients:

limits of Pakistan, without consent

Offence:

Kidnapping from lawful guardianship

PPC Section No.: 361

Essential ingredients:

Minor, Male= less than 14 years, Female = less than 16 years, without consent of

guardian

Offence:

Abduction

PPC Section No.: 362

Essential ingredients:

Deceitful means induces

Offence:

Rape

PPC Section No.: 375

Essential ingredients:

Women, sexual intercourse without her consent

Offence:

Unnatural offences

PPC Section No.: 377

Essential ingredients:

Man, Women or animal, against the order of nature

Offence: Theft

PPC Section No.: 378

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Essential ingredients:

Intent, Moveable property, possession, knowledge

Offence:

Extortion

PPC Section No.: 383

Essential ingredients:

Intent, Fear, Moveable property, valuable things

Offence: Robbery

PPC Section No.: 390

Essential ingredients:

Instant, Hurt, Wrongful restrain, Fear

Offence:

Dacoity

PPC Section No.: 391

Essential ingredients:

05 or more persons conjointly commit or attempt to commit a robbery

Offence:

Criminal breach of trust

PPC Section No.: 405

Essential ingredients:

Entrustment, Dishonestly, Misappropriate, wil fully

Offence:

stolen property

PPC Section No.: 410

Essential ingredients:

Possession, Extortion, Criminal y misappropriate

Offence:

Reception or retention of stolen property

PPC Section No.: 411

Essential ingredients:

Dishonesty, Knowledge, reason, to believe

Offence:

Cheating

PPC Section No.: 415

Essential ingredients:

Intent, Fraudulently, Dishonesty, Deceived

Offence:

Cheating by personation

PPC Section No.: 416

Essential ingredients:

Cheat by personation, knowledge

Offence: Mischief

PPC Section No.: 425

Essential ingredients:

Intent, Knowledge, Wrongful loss, Damage, to the Public/person/property

Offence:

Criminal trespass

PPC Section No.: 441

Essential ingredients:

Intent, possession

Offence:

House Trespass

PPC Section No.: 442

Essential ingredients:

Entering into building, tent, vessel

Offence:

Lurking house-trespass

PPC Section No.: 443

Essential ingredients:

Entering into building, tent, vessel

Offence:

Lurking house-trespass by night

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PPC Section No.: 444

Essential ingredients:

Enter after sunset and before sunrise

Offence:

Forgery

PPC Section No.: 463

Essential ingredients:

Intent, Fraud

Offence:

Making a false document

PPC Section No.: 464

Essential ingredients:

Intent, Dishonesty, Fraudulently

Offence:

Defamation

PPC Section No.: 499

Essential ingredients:

Intent

Offence:

Criminal Intimidation

PPC Section No.: 503

Essential ingredients:

Intent, treat

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FORM No. 25.35(1)(A)

POLICE DEPARTMENT _____ DISTRICT

DEATH REPORT - SUDDEN DEATH FROM NATURAL CAUSES

DEATH REPORT No. POLICE STATION

Dated _____

	1. Name of place where death occurred.	
	2. Distance and direction from the police station in whose jurisdiction it is.	
	3. Date and hour of discovery of the death.	
	4. Name, parentage and residence of two or more persons who identify the body as that of the deceased person named in this report.	son of resident of
	(Note. - *Relatives of deceased, or two respectable witnesses to identification should be obtained, if possible*).	son of resident of
	5. Name of deceased Parentage Caste Residence Condition in life	
	6. Age and Sex	Age Sex
	7. Condition of clothes, ornaments, & c., as not indicating an unnatural death.	
	8. Position of limbs, eyes and mouth	
	9. Expression of the countenance	
	10. Injuries or marks of violence the body may have received.	
	''Wounds and bruises''. Position, length and breadth.,	
	11. Blood, liquid or clotted; where oozed from and to what amount.	
	12. In what manner, or by what weapon or instrument, such marks of injuries or of violence appear to have been inflicted.	
	13. Is the body well nourished and vigorous or emaciated and weak ?	
	14. Apparent cause of death.	
	15. Any signs of death having been caused by violence or poison, or any rumours of such being the case ?	
To be made out on separate sheets of papers.	16. Description of each article of clothing, ornaments, covering, weapons, etc., found on or near the body.	
	17. Sketch plan of the scene of death.	
	18. Brief history of the case	
	19. Signature of two or more respectable inhabitants present at investigation and of investigating officer with date and place of signing	

ANNEXURE I – FORMS 25.35 OF THE POLICE RULES, 1934

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FORM No. 25.35(1)(B)

DEATH REPORT :- UNNATURAL DEATH BY VIOLENCE

DEATH REPORT No. _____ POLICE STATION _____

Dated _____

1. Name of place where the death occurred or where body was found (state which).

2. Distance and direction from police station in whose jurisdiction it is.

3. Date and hour of discovery of the death.

4. Names, parentage and residence of two or more persons who identify the body as that of the deceased person named in the report.

(**Note.** - Relations of the deceased or two respectable witnesses to identification should be obtained, if possible)

5. Name, parentage, caste, residence and condition in life of the deceased.

6. Age and sex.

7. Condition of the clothes, ornaments, & c., and marks of either having been forcibly removed or of being stained with blood or other matter.

(Note. -If the Civil Surgeon or other Medical Officer is expected to attend to examine the body this information should be filled in so far as can be seen and without touching or removing any clothes, and in such case it should be completed after he has finished his examination of the body)

8. Position of the limbs, eyes and mouth.

9. Expression of the countenance.

10. Injuries or marks of violence the body may have received.

Wounds and bruises. - Show position, length and breadth.

(Note. - *Not depth. Be careful not to probe wounds.*

If the Civil Surgeon or other Medical Officer be expected to attend to examine the body, this information should be filled in after he has completed his examination)

11. Blood, liquid or clotted ? Where oozed from and to what amount ?

12. In what manner or by what weapon or instrument such marks of injuries or of violence appear to have been committed ?

13. Was there any rope or other article round the neck, or any mark of ligature on the neck ?

14. Had such rope or article apparently been used to produce strangulation, and, if the body had been suspended by it, could it probably have supported the body ?

In what mode was the either end of the rope attached to the support ?

15. Where there any foreign matters, such as weeds, straw &c., in the hair or clenched in the hands of the deceased, or attached to any part of the body ?

16. Is the body well nourished and vigorous or emaciated and feeble ?

17. Is it stout, thin, or decomposed ?

18. Height by measuring from head to feet.

19. Distinguishing marks - *Position and appearance of moles, scars, & c.*

20. Apparent cause of death.

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To be made out on separate sheets of papers	21. Are there any circumstances or rumours tending to show that deceased killed himself 22. Description of each article found on body (to be labelled and sealed). 23. Description of each article found near body (to be labelled and sealed). 24. Sketch plan of the place where body was found. 25. Signature of two or more respectable inhabitants present at investigation and of investigation officer with date and place of signing.	

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FORM No. 23.35(1)(C)

DEATH REPORT - UNNATURAL DEATH BY POISONING

DEATH REPORT NO. _____ POLICE STATION _____

Particulars relating to the case, in addition to those given in Form No. 25.35(b)

1	Was deceased in good health previous to the attack ?	
2	If not in good health, what was he suffering from ?	
3	What medicine was he taking ?	
4	What did the last meal consist of ?	
5	What was the interval between the last meal and the commencement of the symptoms ?	
6	What did the deceased last eat or drink before the commencement of the symptoms ?	
7	What was the interval between the very last time he ate or drunk, and the commencement of the symptoms ?	
8	What were the first symptoms ?	
9	Was he thirsty ?	
10	Did he become faint ?	
11	Did he complain of head ache or giddiness ?	
12	Did he appear to have lost the use of his limbs ?	
13	Did he sleep heavily ?	
14	Was he at any time insensible ?	
15	Did convulsions occur ?	
16	Did he complain of any peculiar taste in his mouth ?	
17	Did he notice any peculiar taste in his mouth ?	
18	Was he sensible in the intervals between the convulsions ?	
19	Did he complain of burning or ingling in the mouth and throat, or of numbness and tingling in limbs ?	
20	Was there vomiting ?	
21	Was there purging ?	
22	Was there pain in the stomach ?	
23	Mention any other symptoms ?	
24	Had the deceased ever suffered previously from a similar attack ?	
25	How many other persons partook of the meal of food, or drink by which the deceased is supposed to have been poisoned ?	
26	How many were affected by it, and in what way ?	
27	Did the deceased move from the place where the first symptoms were noticed; if so, how far ?	

Dated . . 19 }	(*Signature of officer conducting the inquest*)
(Signature of two or more respectable inhabitants of the place present at the investigation) A B	*Name* *Rank*

OFFICE OF THE POLICE SURGION CHANDKA MEDICAL COLLEGE HOSPITAL LARKANA

P.M NO._____ DATE _____

Memorandum of Post-Mortem Examination held at C.M.C Hospital Larkana on the dead body of: _____

_____

(I). GENERAL PARTICULARS:

1. By whom the corpse sent? _____

   _____

2. By whom was the corpse brought? _____

   _____

3. By whom identified?

   a) _____

   _____

   b) _____

   _____

4. a) Exact time of its receipt
   b) Exact time of beginning of P.M EXAMINATOIN
   c) Exact time completion of P.M EXAMINATION
5. Information furnished by Police
6. Condition before death

(II). EXTERNAL EXAMINATION:

1. Sex, Apparent Age, Race etc.
2. Description of clothes and its condition or ornaments on the body:

ANNEXURE II – SAMPLE MEMORANDUM OF POST-MORTEM EXAMINATION

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3. _____

_____

4. Condition of the body _____

_____

5. Special Marks on the skin _____

_____

6. Marks of ligature of the neck and dissection ect. _____

_____

7. Rigor Mortis _____

_____

8. General description about feature extent and signs of decomposition, presence of Post-Mortem lividity (P.M.L Position of Tongue, State of pupils, oozing from mouth, mostrits, ear, etc.

SURFACE WOUNDS AND INJURIES:

(III). THORAX:

1. Walls-Ribs & Cartilages

_____

2. Pleurae

_____

3. Larynx & Traches

_____

4. Right Lung

_____

5. Left Lung

_____

6. Blood Vesses

_____

7. Pericardium & Heart

_____

(IV). ABDOMEN:

1. Walls _____
2. Pertonium _____
3. Mouth Pharynx & Oesophagus _____
4. Diaphragm _____
5. Stomach & Its Contents _____
6. Blood Vessels _____
7. Small Intestine & Its Contents _____
8. Large Insestine & Its Contents _____
9. Liver _____
10. Spleen _____
11. Kidney
12. Bladder _____
13 Orans of Generation External & Internal _____

(V). MUSCLES, BONES, JOINTS

INJURIES	DISEASE/ DEFORMITY	FRACTURE	DISLOCATION

(VI). CRANIUM & SPINAL CORD

N.B SPINAL CANAL NEED NOT BE EXAMINED UNLESS DISEASE OR INJURY SCALP SKULL BRAIN & VERTEBRACE.

(VII). REMARKS BY MEDICOLEGAL OFFICER

From external as well as internal examination of deceased

_____

S/o _____

I am of the opinion that death is due to _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Probable time that elapsed:	
(a) Between Injury and Death	
(b) Between Death and Post-Mortem	

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FORM No. 25.57(2)

FINAL REPORT UNDER SECTION 173, CRIMINAL PROCEDURE CODE

District _____ Final report No. _____, dated _____ 19 _____,
Police Station _____ in first information No. _____ dated _____19 .

1. Name and address of complainant or informant.	
2. Nature of charge or complaint.	
3. Description of property stolen, if any.	
4. Name and address of accused persons, if any.	
5. If arrested, date and hour of arrest.	
6. Date and hour of release and whether on bail or recognizance.	
7. Property (including weapons) found, with particulars of where, when and by whom, found and whether forwarded to Magistrate.	
8. Brief description of information or complaint, action taken by police with result, and reasons for not proceeding further with investigation.	

Despatched at A.M./P.M. on _____ 19

Signature of investigating officer.

N.B. - The Magistrate should record his order on the back

ANNEXURE II – FORM 25.57 OF THE POLICE RULES 1934

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FORM No. 21.35(2)(a)

CASE INDEX CARD

Head _____ Sub-head _____ Index No. ____ Police Stn. ___ F.I.R. No. _____ Date _____ Law and Sec. _____

Facts in brief particularly those showing method..

(*Reverse*)	(*Reference*)
Name and *aliase* _____	Name Index Card No. _____
Parentage and address _____	Photo album No. page _____
Caste and trade or occupation _____	P.R. No. _____
Description _____	Index Card No. _____
Deformaties and Peculiarities _____	Index Card No. _____

FORM No. 21.35(2)(b)

CRIMINAL INDEX CARD

NAME		*Aliases* or Nicknames					No.
Parentage		Residence					Caste occupation
	HEIGHT						
Date of birth	Ft. In	Build	Eyes	Hair	Complexion	Hair on face	Descriptive Index No. ___ Deformity Index No. ___

Marks and peculiarities _____

ASSOCIATES

1. _____ C.I. No. _____
2. _____ C.I. No. _____
3. _____ C.I. No. _____
4. _____ C.I. No. _____
5. _____ C.I. No. _____
6. _____ C.I. No. _____
7. _____ C.I. No. _____
8. _____ C.I. No. _____

P.R. No. _____ Photo Vol. _____ Page _____

(Reverse)

Medhod

CRIMINAL HISTORY

ANNEXURE IV – FORM NO. 21.35(2)(A)-(G) OF THE POLICE RULES 1934

FORM No. 21.35(2)(c)

No. _____

DESCRIPTIVE INDEX CARD

(To be indexed by height and where this is identical by age and so on)

Height _____ Date of birth _____

Build _____ Eyes _____

Hair on head _____ Hair on face _____

Complexion _____

Identification marks (scars, etc.)_____

Gait, speech and manner _____ Deformity Card No. (if any) _____

Dress _____

Deformities _____

Name _____

Parentage _____

Criminal Index Card No. _____

Deformity Index Card No. _____

FORM No. 21.35(2) (d)

DEFORMITY INDEX CARD

Class _____

Sub-Class _____

Nature of deformity _____

Name _____Parentage_____

Residence _____

Criminal Index Card No. _____

FORM NO. 21.35 (2) (e)

(To be completed by Investigating Officer and sent to Central Intelligence Agency immediately an arrest is made for offences under Chapter 12 to 17, Pakistan Penal Code)

Police Station _____

FIR No. and date _____

Section _____

Name of accused and aliases _____

Parentage _____

Caste _____

Trade or Profession _____

Residence (original/present) _____

Description _____ Height _____

Date of birth _____ Build _____

Eyes _____ Hair _____

Complexion _____ Hair on face _____

Particular identification marks _____

_____

Gait, speech and manner _____

Dress _____

Deformities and peculiarities _____

Habits and weaknesses _____

_____

Female acquaintances _____

Associates in crime _____

Position occupied in the gang and importance generally as a criminal

_____

Receivers with whom he deals _____

Relatives _____

Persons likely to afford him shelter _____

Convictions _____

Suspicions since last arrested _____

Grounds for arrest _____

Remarks regarding his criminal activities and method _____

_____

Date of submission of report _____

Signature of investigating officer

FORM No. 21.35(2)(f)

PROPERTY CARD

Lost/Stolen

Name of article _____

Local or Punjabi name _____

Marks of identity _____

Date of loss _____ from whose possession and place _____

Owner's name and address _____

Persons suspected (if any), his mode of disposal _____

Under what circumstances lost (Report at Police Station) _____

_____

FORM No. 21.35(2)(g)

Method

PROPERTY CARD

Recovered

Name of article _____

Local or Punjabi name _____

Marks of identity _____

Date of recovery _____ from whose possession and place __

Action taken against possessor _____

Circumstances under which recovered _____

Method of disposal _____

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CHAPTER 11 POLICE REPORT UNDER SEC. 173 CR.P.C.

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Police Final Report for Cancel ation 292

Police Final Report as Untraced 292

INTRODUCTION

The culmination of every investigation of a cognizable offence registered under Sec. 154 Cr.P.C. occurs with the submission of a Police Report to the Court under Sec. 173 of the Cr.P.C. Police Reports can be of three types430:

i.

A report in which one or more persons are recommended to stand trial. Such reports are referred to as the Charge Sheet or more commonly as the Chal an. A charge sheet/chal an can be both ‘Interim’ or ‘Final’

(discussed below). Both interim and final charge sheet/chal an are submitted as per Form 25.56(1) of the Police Rules.

i . A report of cancellation. Such a report declares a case to be false or otherwise unfit to be prosecuted for reasons given in the report. A report of

cancel ation is submitted as per Form 25.57(2) of the Police Rules.

i i. A report of untraced. Such a report indicates that the police have not been able to trace the person responsible for the offence in question and have no reasonable hope of doing so. A report of untraced is submitted as per Form 25.57(2).

1. POLICE REPORT UNDER SEC. 173 CR.P.C. FOR PERSONS RECOMMENDED TO STAND TRIAL – THE CHARGE

SHEET OR CHALLAN

I. FINAL AND INTERIM CHARGE SHEET/CHALLAN

Al investigations are to be completed "without unnecessary delay" and the Final Chal an is to be submitted within 14 days of the registration of the FIR under Sec. 154. 431 However, this does not mean that al investigations must be completed within this time period. It is obvious that in some cases, especial y complex criminal investigations, the investigation may take longer than 14 days. In such cases, Sec. 173(1) Cr.P.C. notes that the Officer-in-Charge of a Police Station is given a further 3 days to submit an 'interim report' in the same Form as the Charge Sheet (25.56(1)) which notes the result of the investigation made until then along with reasons for not filing a final chal an. Where an interim report is submitted, the Public Prosecutor may request the Court for postponement of the trial to al ow the Police further time to complete the investigation and submit a Final Chal an. However, it is up to the Court whether it wishes to postpone the trial, after recording its reasons, or start the trial on the basis of the interim report.

Where the Police have arrested the accused and are satisfied that sufficient evidence exists against him/her, they are to recommend to the Court that the accused stand trial. This is done by submitting to the Court a Police Report in the form of a Charge Sheet/Chal an under Rule 25.56(1) of the Police Rules as reproduced below: 430 Typologies from Punjab Prosecution Department – Guidelines for Scrutiny of Police Reports. Available at:

https://ppd.punjab.gov.pk/system/files/Guidelines%20on%20scritny%20of%20ploice%20reports%20173.pdf [accessed 14th October, 2020]

431 Sec. 173(1) Cr.P.C.

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FORM No. 25.56(1)

CHARGE SHEET

District _____ Charge Sheet No. _____, dated _____ 19 _____,
Police Station _____ in first information No. _____ dated _____

1	2	3	4	5	6	7
		NAME AND ADDRESSES OF ACCUSED PERSONS SENT FOR TRIAL				
Name, address and occupation of complainant or informant	Name and addresses of accused persons not sent up for trial, whether arrested or not arrested, including absconders, (show absconders in red ink)	In custody	On bail or recognizance	Property (including weapons) found, with particulars of where, when and by whom, found and whether forwarded to Magistrate	Names and addresses of witnesses	Charge of information :- Name and offence and circumstances connected with it, in concise detail, and under what section of the law charged

Despatched at $\frac{A.M.}{P.M.}$ on _____ 19

Signature of investigating officer

This Charge Sheet Form has 7 columns:

1. Name, Address, and Occupation of Complainant or Informant.

2. Name, Address of Accused Persons not set up for Trial, whether arrested or not, including absconders (absconders to be shown in Red Ink).

3. Names and Address of Accused Persons Sent for Trial – In Custody

4. Names and Addresses of Accused Persons Sent for Trial – On Bail

5. Property (Including Weapons) found, with particulars of where, when and by whom, found and whether forwarded to Magistrate.

6. Names and Addresses of Witnesses.

7. Charge or Information:- Name and Offender and Circumstances connected with it, in concise detail and under what section of the laws charged.

II. COLUMNS OF THE CHARGE SHEET/CHALLAN

Column 1: In Column 1 the details of the Complainant or Informant are noted.

Column 2: In Column 2 are placed two kinds of persons: a) those persons who have been released by the Police during the investigation under Sec. 169 Cr.P.C. on bail bond with or without sureties due to insufficient evidence, b) absconders who the Police are unable to arrest. Absconders are to be entered into in red ink in the Charge Sheet.

Columns 3 and 4: Columns 3 and 4 are linked and both list the persons for whom trial is to take place. In Column 3

the names of those persons who are in Police custody are listed. Column 4 lists persons who are out on bail granted by the Court or already in Judicial Custody (Judicial Remand) at the time of submission of the Police Report.

Column 5: Columns 5 lists al the property that has been recovered by the Police during the investigation and is linked to the crime in some way. This refers to weapons used in the offence as well as any other property that may be relevant such a stolen goods recovered, or such other items. It is important to note that all recovery memos of such property are also to be attached to the Police Report when filing it.

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Column 6: This column mentions the names and addresses of al witnesses that the Police recommend for examination during the trial. If the list of witnesses is large, especial y in complex cases, the witnesses can be listed on a separate sheet of paper and attached as an annexure to the Police Report. In such a situation Column 6 wil note

“List of witnesses prepared separately and attached at Annexure (give number of annexure)”.

Column 7: Column 7 is a critical element of the Chal an as it provides al the relevant information relating to the case.

The column lists the Penal sections of the law under with the accused is charged. These may be the same or different from sections of law mentioned in the FIR. This column also then contains a summary of the case. The summary is likely not to fit in the column and, therefore, can be continued on the overleaf or attached as a annexure on a separate sheet of paper.

2. DOCUMENTS TO BE ATTACHED WITH CHARGE SHEET

The Charge Sheet is the basis upon which a trial starts and, therefore, must have al relevant documentation attached to it when it is submitted. The fol owing documentation should be submitted to the Court through the Public Prosecutor with the Charge Sheet:

1. Copy of First Information Report.

2. Memo of visit of scene of crime.

3. Plan of scene.

4. Statements recorded under section 161 Cr.P.C.

5. Statements recorded under section 164 Cr.P.C whether statements of witnesses or confessions made by accused.

6. Remand report and remand orders.

7. Memo of identification parade if held before magistrate.

8. Dying declarations whether recorded by police officer, doctor or a magistrate.

9. Memos of arrest.

10. Memos of search.

11. Memos of recoveries made during investigation.

12. Record prepared relating to identity of accused, residence and previous convictions.

13. Record regarding identification of property.

14. Death certificate in case of death.

15. Post-mortem report

16. Medical certificate with medical history.

17. Report of experts i.e. Bal istic, Forensic, Explosives, Bomb Disposal Squad, etc.

18. Correspondence related to expert opinion,

19. Permission for prosecution obtained from competent authorities, if applicable.

20. Copies of Daily Diary of the Police Station.

21. Supporting evidence-photography of the scene, press clippings, telephone cal s data, C.C.T.V. recordings, etc.

22. Set of al case diaries issued by the Investigating Officer. 432

3. HOW A FINAL CHARGE SHEET/CHALLAN IS SUBMITTED

432 Barrister Abdul Khalique Shaikh (PSP) and Muhammad Akbar (PSP, QPM, PPM) 2014. 'Basic Investigation Handbook'. Paramount Books (Pvt.) Ltd. Karachi. pp.265-6.

The Final Report is usual y submitted by the Superintendent of Police, Assistant Superintendent of Police or Deputy Superintendent of Police supervising the investigation of the Police Station concerned. The concerned officer is to submit the Final Report to the Court through the Public Prosecutor. 433

4. SUBMISSION OF SUPPLEMENTARY CHALLAN AFTER SUBMITTING AN INTERIM OR FINAL CHALLAN

In situations where an Interim or Final Report is submitted to the Court, the Police is not barred from continuing their investigation or reinvestigating a criminal case and submitting further evidence to the Court which may come to light. 434 The Police can do so by submitting a Supplementary Report in the same Form (25.56(1)) provided the case is stil pending trial. However, no supplementary chal an can be submitted once a trial has concluded.

5. POLICE REPORT UNDER SEC. 173 FOR CANCELLATION OR AS UNTRACED

I. POLICE FINAL REPORT FOR CANCELLATION

A Police Report of cancel ation under Sec. 173 Cr.P.C. declares a case to be false or otherwise unfit to be prosecuted for the reasons noted in the report. In effect, by submitting such a report the Police is recommending to the Court for the cancel ation of the FIR registered in this case as the

investigation has proven that no cognizable offence has taken place. Such reports are submitted when the al egations in the FIR are found to be: i.

maliciously false,

i . founded on an error of fact,

i i. founded on mistake of law,

iv. the allegations amounted to a non-cognizable offence,

v. the matter is predominantly a dispute of a civil nature and would be more appropriately adjudicated upon by the civil courts.

Where the al egations in the FIR were deliberately with malicious intent, the complainant or informant may be liable for offences under the P.P.C. 435 Where the al egations made in the FIR are not based on any il -intentions then the investigation wil be closed with a recommendation to the magistrate to cancel the FIR. The FIR in such a case is not treated as cancel ed until an order has been passed by the competent magistrate after a receipt of such a report under Sec. 173 Cr.P.C.

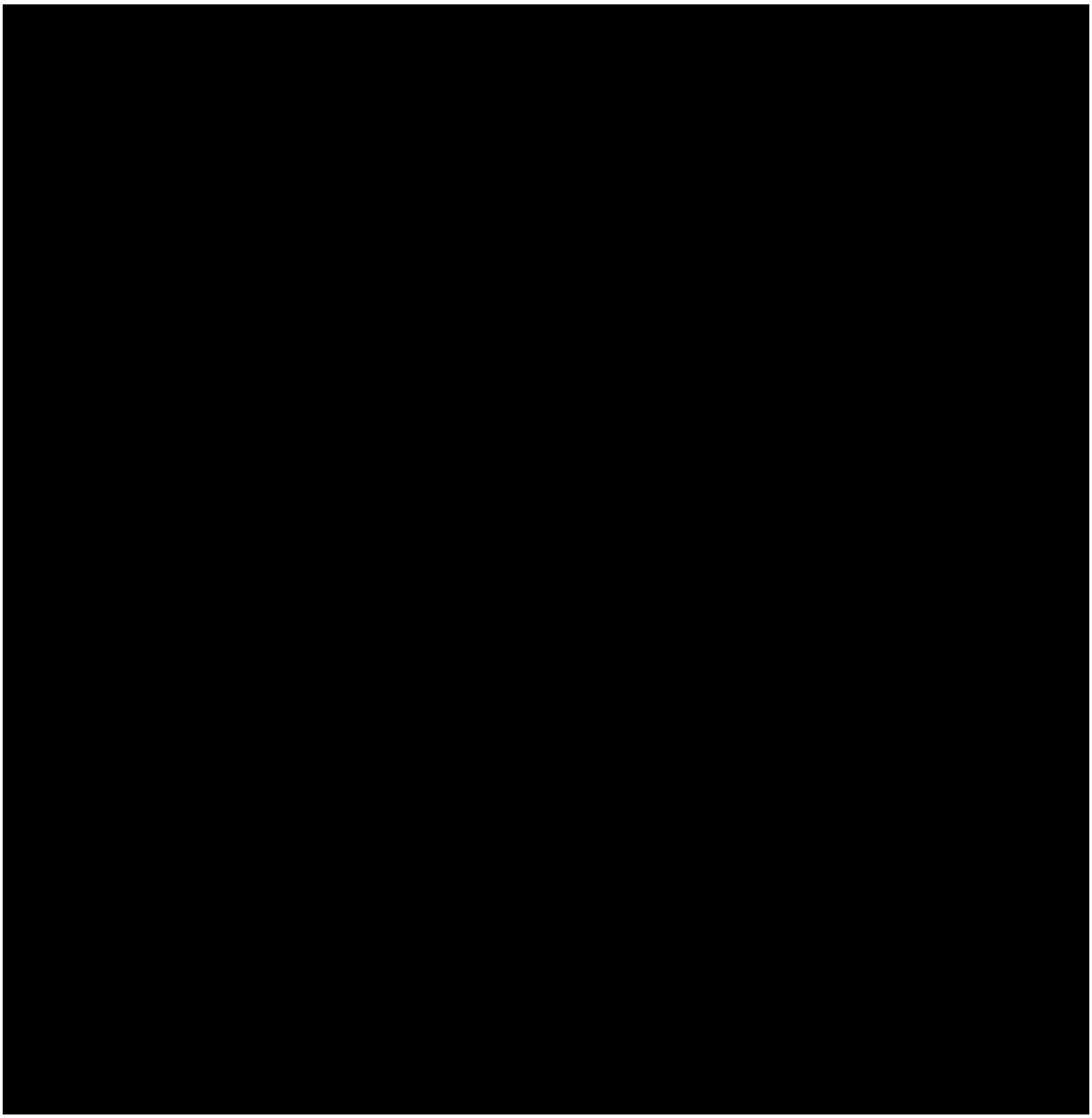
The Police Report for Cancel ation is prepared as per Form No. 25.57(2) of the Police Rules (below).

II. POLICE FINAL REPORT AS UNTRACED

When police are unsuccessful in apprehending the accused, after taking al measures in their power, and it is advisable to suspend the investigation, a Final Report is submitted under Sec. 173. This Report is submitted in the same Form as a the report for cancel ation – Form 25.57(2) of the Police Rules as reproduced below: 433 Sec. 173(1) Cr.P.C.

434 Raja Khurshid Ahmad v. Muhammad Bilal 2014 SCMR 474 Supreme Court; also seeThe State vs. Presiding Officer, Special Judge (Offences in Banks) Karachi 2019 MLD 1139 Karachi High Court Sindh, para. 9.

435 See Pakistan Penal Code Section 203. Giving false information respecting an offence committed.



FORM No. 25.57(2)

FINAL REPORT UNDER SECTION 173, CRIMINAL PROCEDURE CODE

District _____ Final report No. _____, dated _____ 19 _____,
Police Station _____ in first information No. _____ dated _____19 .

1. Name and address of complainant or informant. 2. Nature of charge or complaint. 3. Description of property stolen, if any. 4. Name and address of accused persons, if any. 5. If arrested, date and hour of arrest. 6. Date and hour of release and whether on bail or recognizance. 7. Property (including weapons) found, with particulars of where, when and by whom, found and whether forwarded to Magistrate. 8. Brief description of information or complaint, action taken by police with result, and reasons for not proceeding further with investigation.	

Despatched at A.M./P.M. on _____ 19

Signature of investigating officer.

N.B. - The Magistrate should record his order on the back

As per Police Rule 25.57(1) in final cancel ation or untraced reports, the facts of the case which the investigating officer believes to be correct should be summarised in the Form 25.57(2) together with the grounds for his belief.

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CHAPTER 12: ROLE OF THE PROSECUTOR IN INVESTIGATIONS

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INTRODUCTION

Many of the delays and inefficiencies associated with the criminal justice system can be done away with through establishing a culture of communication and consultation between the Police and the Prosecution. This would lead to fewer instances of failure to lodge FIRs in appropriate cases and resort being made to the justice of peace, lapses in investigation, incorrect or superfluous offences being listed in FIRs, problems with and return of reports under Section 173 Cr.P.C, evidence being discarded due to failure to adhere to protocol and most commonly the Prosecution version not being presented or argued most effectively at trial or at the preliminary stages of remand and bail.

There is also a serious concern that certain cases are registered, investigated and tried in which there exist no prospects of securing a conviction. This not only burdens the investigation agency and the Prosecution department but also clogs the Court and promotes delays. Furthermore, it is a miscarriage of justice for persons to be subjected to the hardship of criminal investigations and trial in cases which have no prospects of proving guilt.

Hence, effective communication and consultation between the Police and Prosecution Department wil ensure that only those cases are investigated and tried which have a legal and evidential.

This chapter starts off by discussing the coordination between the Police and the Prosecutors as it currently exists during and after the investigation process. This Chapter also outlines the definition of a Public Prosecutor, the existing legal framework highlighting the powers and responsibilities of Prosecutors and the most importantly the role they can play to assist the police during investigation.

1. WHO IS A PROSECUTOR AND HOW HAS HE BEEN DEFINED UNDER THE LAW?

A Prosecutor is he who prosecutes another for a crime in the name of the government436. Section 4(t) of the Criminal Procedure Code, 1898 defines "Public Prosecutor" as any person appointed under Section 492437, and includes "*any person acting under the directions of a Public Prosecutor and any person conducting a Prosecution on behalf of the State in any High Court in the exercise of its original criminal jurisdiction*".

The appointment of Public Prosecutors is outlined in Section 492 of the Code of Criminal Procedure, 1898. It outlines the power of the Provincial Government to appoint Public Prosecutors in any local area either for specific cases or general y. Moreover, Section 18 of the Anti-Terrorism Act, 1997 also specifies that the Government shal appoint

"proficient, diligent and professionally competent Public Prosecutors" in relation to each Anti-terrorism Court and may also appoint Additional Prosecutors or Law officers.

Accordingly, in Pakistan, significant legislation has been undertaken particularly at provincial level and rules, guidelines and protocols have been developed to empower Prosecutors to be more involved with the investigative process by providing legal guidance to the Police, col aborating with investigation, scrutinizing the investigative work, handling remand & bail matters and advising/recommending cases for discharge or Prosecution as the case may be 436 Black's Law Dictionary, Tenth Edition by Bryan A. Garner

437 Criminal Procedure Code, 1898

2. LEGAL FRAMEWORK GOVERNING THE ROLE OF PROSECUTORS IN PAKISTAN

PROVINCE

AUTHORITY

Sindh

Sindh Criminal Prosecution Service (Constitution,

Functions and Powers) Act 2009, Section 9, 11

Prosecution Guidelines for Public Prosecutors issued

under Section 9A of the Sindh Cr Prosecution Act 2009.

These SOPs have been promulgated under Rule

25.14(1) of the Police Rules.

Khyber Pakhtunkhwa

Khyber Pakhtunkhwa Prosecution Service

(Constitution. Functions and Powers)(KPPS) Act 2005,

Section 4, 5, 7 and 8

Punjab

Punjab Criminal Prosecution Service (Constitution,

Functions and Powers) Act 2006, Section 9, 10, 11 and

13

Balochistan

Balochistan Prosecution Service (Constitution,

Functions and Powers) Act 2003, Section 9

3. ROLE OF THE PROSECUTORS IN FACILITATING THE IO DURING THE INVESTIGATION PROCESS.

The role of the Police certainly cannot be seen in isolation of the Prosecution department and what fol ows is only an il ustration of the statutory duty of the Prosecutor in relation to conduct of investigation. It is important for

Prosecutors to be well-informed of the investigative processes and to be assertive in exercising their role of scrutinizing the investigative process adopted by the Police.

I.

REGISTRATION OF AN FIR

The role of Prosecutors in coordination with the Police begins immediately after the registration of an FIR. The Police Officer is required to send a copy of the FIR to the District Public Prosecutor who then inspects the same438 and issues necessary directions to the Head of Investigation or the DPP (District Public Prosecutor in case of Sindh) and also inspects, scrutinizes and supervises the whole investigation process. 439 While the Sindh and KP Prosecution act identify the responsibility of the prosecutor to supervise the entire investigation process, the Balochistan and Punjab Prosecution Act limit the role of the Prosecutor with respect to only scrutiny of the Chal an. 440 However, Section (7) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 elaborates that:

‘ *The Prosecutor shall submit, in writing, to the Magistrate or the Court, the result of his assessment as to the available evidence and applicability of offences against all or any of the accused as per facts and circumstances of the case and the Magistrate or the Court shall give due consideration to such submission*’

4382008 PLD 28 Peshawar

439 Section8(2) of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005

440 Section 9 of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 and Balochistan Prosecution Service (Constitution, Functions and Powers) Act 2003.

II. GUIDANCE DURING THE INVESTIGATION OF THE CASE

During the investigation, whenever any legal guidance or opinion is required by the Head of Investigation, it is sought from the District Public Prosecutor, who then issues such guidance or opinion, which is then required to be fol owed by the Investigating Officer. 441 A Public Prosecutor also has the power to issue general guidelines to the Police regarding investigation necessary for an effective Prosecution. 442

Moreover, under the KPPS and the SPS Act, any insertion or deletion of offences and sections of law in the FIR fal s within the exclusive domain of the Investigating Officer and the Prosecutor. 443

KPPS Act

The [Khyber Pakhtunkhwa] Prosecution Service (Constitution, Functions and Powers) Act, 2005, lays out the general advice/guidance delivery process between the Police and Prosecution in Khyber Pakhtunkhwa: 1. The Investigation Officer (IO) may hold consultations with the duty Prosecutor in al cases at the initial stages of an investigation; however, al evidential material col ected by the Investigation Officer (IO) must be mandatorily provided to the Prosecutor along with the Police file when seeking advice from the Prosecution Office.

2. Advice so given wil deal primarily with admissibility of evidence, evidential sufficiency, probable lines of inquiry, possible defences, and reliability/credibility of witnesses. The Prosecutor wil then further aid in identifying and rectifying any evidential weaknesses in the case if it is required.

3. Each consultation conducted between the Police and the Prosecutor’s Office may be recorded in ‘Form B’, which wil lay out the problems encountered, possible solutions, and actions taken to rectify the problems.

This wil then be al ocated a reference number, which can then be used (only) internal y by both the Police and the Prosecutor throughout the life of the case.

4. In addition to this, the Police Rules, 1934 also state that:

“Investigating Officers are expected to take steps to secure expert technical assistance and advice, whenever such appears desirable in the course of an investigation for purposes of evidence or for demonstration in Court”. 444

This rule further emphasizes on the responsibility of the Investigating Officers to seek the guidance of Prosecutors in technical legal advice.

III. SHOULD THE POLICE ONLY BE COLLECTING EVIDENCE TO FAVOUR THE CASE OF THE PROSECUTION?

Inculpatory evidence is that which implies guilt or tends to incriminate the accused. It is evidence that shows, or tends to show, a person's involvement in an act in order to establish guilt. On the other hand, exculpatory evidence is defined as evidence "which tends to justify, excuse or clear the defendant from al eged fault or guilt445. "

It is the basic duty of the Investigating Officer to place on record al the relevant documents or other evidence col ected during investigation; whether it favored accused or Prosecution446. The phrase “col ection of evidence”

441 Section 8(4) and 8(5) of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005

442 Section 5(d)of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005

4432016 PCrLJ 1096 Peshawar, Section 9 and Section 9 of the Sindh Prosecution Service (Constitution, Functions and Powers) Act, 2009.

444 Section 25.14, Police Rules, 1934

445 Black's Law Dictionary 566 (6th ed. 1990).

446 2018 PCrLJ 1337 Shariat Court Azad Kashmir; 2012 SCMR 307

used in the definition of investigation cannot be confined to such evidence which only favors the Prosecution. 447

Therefore, the Investigating Officer is duty-bound to col ect some positive evidence either in support of the incident or in negation of the same. If some concrete evidence were col ected by the Police to negate the occurrence, then it could be said that the reported incident was maliciously false. 448 Such investigation shal not be one-sided or tainted with malice. The investigation does not and cannot mean that by hook or by crook material only against the accused has to be gathered. At the same time, it also means that where a suspicion arises with regard to the guilt of the accused, it becomes that duty of the investigating agency to probe al avenues with an aim to reach the truth449.

The duty of the Investigating Officer is to objectively col ect al relevant evidence and present an informed opinion to the Court and also to the Prosecutor since the Prosecutor would also rely on all the evidence unearthed during the investigation when deciding whether to prosecute or not and in so doing save innocent persons from the agony of endless investigation and trial450.

If during the course of investigation, the accused presents his own version or narration of events, the Investigating Officer is bound to record it. Failure of the Police to record the accused's version or evidence sought to be adduced by him amounts to frustrating the constitutional guarantee under Articles 4, 10 & 10-A of the Constitution of the Islamic Republic of Pakistan. 451

It is of critical importance for Prosecutors to ensure that investigation is conducted fairly and it shal be examined in this module how they have to form an informed opinion on the basis of the investigation whether it would be prudent to proceed with a trial or to discharge the accused.

IV. DUTY TO CHALLENGE ORDER OF REMAND

There is no doubt that Prosecutors would be interested in contesting remand themselves in appropriate cases since the extended detention of the accused, if utilized properly, can aid investigation and support the Prosecutor's case.

It is therefore critical that Prosecutors be well-versed with these provisions and be able to use them effectively wherever appropriate.

However, it is pertinent to mention that according to the SOPs of the KP Prosecution Service, where the Prosecutor is of the opinion that the order ‘refusing remand’ is in violation of the law, or serves as an unwarranted restriction of access to justice, the Prosecutor shal chal enge the order through a revision petition in the competent Court. 452 The Police wil render al reasonable assistance to the Prosecutor in the filing and pursuit of the petition, ensuring attendance of Court hearings and that al necessary documents are provided to the Prosecutor’s Office.

V. PROSECUTOR’S ACCESS TO CASE DIARIES.

447 1998 PCRLJ 216

448 2018 PCRLJ 1230 Karachi

449 2007 YLR 2559

450 2003 PCrLJ 56

451 1998 PCRLJ 216

452 Section 7.7, Standard Operating Procedures of Coordination Between Police Department and Prosecution Service, Khyber Pakhtunkhwa, Government of Khyber Pakhtunkhwa

While the content of these diaries cannot be used as evidence, 453 a Court may use them to aid it during an inquiry or trial for the purpose of elucidation of certain facts, seeing time of investigation and for clearing up obscurities. 454

Neither the accused nor his counsel is al owed access to the case diaries merely on the ground that the Court uses them. 455 Where a Police Officer who made the case diary uses it to refresh his memory, 456 he may be contradicted by the Court by using the case diary in accordance with Articles 140 & 156 of the Qanun-e-Shahadat, 1984.

Crucially, the Prosecutor is allowed access to the case diaries. Prosecutors should therefore avail the advantage al owed to them under the law in order to be better prepared for trial and to be better equipped than the defense counsel and the private complainant counsel and therefore be more influential in proceedings.

VI. POLICE- PROSECUTION COORDINATION ON BAIL

The only province that explicitly provides SOPs when securing bail is KP. [457] When a Prosecutor receives a notice of a Bail Petition having been filed, he shal requisition the Police file, and may also require the Investigation Officer (IO) to brief him about the relevant facts of the case. In al cases, the IO shal brief the Prosecutor on the fol owing matters prior to a bail hearing:

- Evidence that has been col ected.
- Evidence that is likely to be col ected in the future (e.g. pending forensic reports)
- Antecedents of the accused.
- Likelihood of absconding.
- Likelihood of obstruction of justice.
- Age, health, and gender of the Accused. [458]

The Prosecutor wil consider the fol owing facts in deciding whether or not to apply for cancel ation of bail:

- The Court did not have the requisite jurisdiction.
- There were serious flaws in the Court’s decision-making process.
- Bail was obtained through misrepresentation.
- Person granted bail has misused the provision of bail.

● Person granted bail has not fulfil ed the essential conditions on which bail was granted.

● New material has come to light which weighs against the grant of bail. 459

Where an IO or the Prosecutor considers a bail granting order against the facts of the case or law, the matter wil be referred to the District Public Prosecutor (DPP) for advice. The DPP shal determine whether an application for cancel ation of bail is warranted or not. 460

453 1976 SCMR 506

454 2005 PCrLJ 1970

455 2018 PLD 157 PHC

456 ibid

457 Section 8.2, Standard Operating Procedures of Coordination Between Police Department and Prosecution Service Khyber Pakhtunkhwa, Government of Khyber Pakhtunkhwa

458 Section 8.2, Standard Operating Procedures of Coordination Between Police Department and Prosecution Service Khyber Pakhtunkhwa, Government of Khyber Pakhtunkhwa

459 Section 8.6, ibid.

460 Section 8.5, ibid.

If the application for cancel ation of bail moves forward, the Police and Prosecutor shall have a duty to disclose all material information to the Court, unless it is necessary for that information to remain protected for the carrying out of an effective investigation. In al cases, the Prosecutor shal move swiftly and without undue delay. The Prosecutor shal not seek unnecessary adjournments and shal ensure that post-arrest bail petitions are argued at the first available opportunity. 461

VII. SCRUTINY OF THE CHALLAN

Upon conclusion of the investigation, the Investigating Officer formulates his own opinion for disposal of the case due to insufficient evidence[462] or for a recommendation for the accused to be sent for trial[463] and submit a Police report/chal an under Section 173 of the Cr.P.C. to the Prosecutor, who then submits it to the authorized Magistrate.

The role of Prosecutor upon receipt of this report is of great significance; he is required to scrutinize the chal an for lacunae[464] and either forward the same to the competent Court if he finds it fit for submission, [465] or return it to the Investigation Officer with written direction to resubmit the report after removal of the deficiencies and defects so identified by him[466] (3 days time period for Sindh and Punjab, 7 for KP while no time frame has been identified under the Balochistan law). [467]

Fol owing this, the Prosecutor is required to submit the amended report to the competent Court. The Court while taking cognizance on a police report takes cognizance of the offence but not of a particular person charged in report as an offender. [468]

The role of the Prosecutor in the light of his expertise and understanding of jurisprudence has been comprehensively articulated by Justice Saj ad Ali Shah in case titled Abdul Hafeez Junejo v The State[469] as:

"…the conduct of the Prosecution on behalf of government is the responsibility of the Prosecutors and every report under Section 173 of the Code of Criminal Procedure including the report for cancellation of FIR or discharge of a suspect or an accused has to be filed in Court after the same is scrutinized by the public Prosecutor …Prosecutors have the power to return such report to the officer In charge of a Police station or the Investigating Officer if they find it defective for the removal of identified defect…the result of such scrutiny as an expert opinion may be placed before the Court for its convenience and consideration of course without any binding force. Even otherwise, the Prosecutor having expertise in the field is in a better position to opine that on the basis of the investigated fact the accused can be tried under a specific provision".

The term ‘scrutinize’ in this context means to examine a matter from al pros and cons and attend al its aspects with due care and caution inasmuch as to make deep search or inspect the matter in close, care and thorough manner. 470

461 Sections 8.3, 8.4, ibid.

462 Section 169 of the Code of Criminal Procedure, 1898

463 Section 170 of the Code of Criminal Procedure, 1898

4642010 PCrLJ 182 Lahore

465 Section 4(b)(i) of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005 and Section 9(4)-(a) and (b) of the Sindh Prosecution Service (Constitution, Functions and Powers) Act, 2009

4662013 PCrLJ 1411 Lahore

467 Section 4(b)(ii) and 7(d) of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005, Section 4(a) of the Sindh Prosecution Service (Constitution, Functions and Powers) Act, 2009 and Section 9 (5) of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006the Punjab

468 2020 PLD 491 KHC

469 2010 YLR 470

470 2012 PCrLJ 1823 Lahore

Therefore, the Office of District Public Prosecutor is not only a post-office but a bridge between Police and Court to promote procedure of Prosecution for better achievement of justice. 471

In scrutinizing the aforementioned report, the Prosecutor is required to examine the nature of offences committed by the accused and analyze whether the correct provisions are mentioned in the investigation report. 472 He can then add or delete or add any offences473 according to the facts and evidence col ected by the Investigating Officer before submitting the report to the Court. 474The object of this exercise is that the applicability of offences is decided by law-knowing agencies and not by the Police who may not be able to provide legal opinion directly to the Court. 475

It is pertinent to mention that although the Prosecutor is required to point out the defects of the report to the Police, he is not authorized to direct for submission of report/chal an under S.173, Cr.P.C. against the accused for their trial476 or to direct the Investigating Officer to place the name of accused in a specific column of the chal an. 477 Hence, there is no legal sanctity attached to the Prosecutor's opinion on the guilt of an accused person. 478

VIII. THE DECISION TO PROSECUTE

How can the Police aid in this decision?

One of the foremost and essential functions of a Prosecutor is to make the decision whether or not to prosecute a case. While the Police, government, media, pressure groups and other stakeholders may be strongly inclined that a particular case be prosecuted, the final decision rests with the Prosecutor who in making his decision has to fairly, firmly, impartial y, consistently, efficiently and with integrity479.

However, since the decision depends on the sufficiency and quality of evidence (Evidential Test), it is vital for the police to maintain the chain of custody and avoid contamination when col ecting and dispatching evidence.

The Prosecutor must acquaint himself with the facts, circumstances and evidence of a case and determine on the strength of these whether there is a sufficient evidential basis to support a Prosecution. Where it is not so, the Prosecutor must not decide to prosecute. A Prosecutor must also make the call whether trial is the best solution in a case or whether it would be

preferable to withhold a Prosecution either so that more evidence could be obtained.

IX. GUIDELINES FOR PROSECUTORS

The Guidelines for Prosecutors issued by the Khyber Pakhtunkhwa Prosecution Service contains a 2-stage test to be applied by Prosecutors to determine whether a case is fit for Prosecution. Any case must pass both stages before the Prosecutor can deem it fit for Prosecution. The two-stage test is as fol ows:

a) Evidential Test – This is a test of sufficiency and quality of evidence where on an objective assessment of evidence and information provided by the investigating agency, the Prosecutor concludes whether or not there exists a realistic prospect of conviction against the accused on each of the charges. It is important to 471 Ibid.

472 Ibid.

473 2009 PLD 135 Lahore; 2015 PLD 84 Lahore

474 2017 PCrLJ 440 Lahore

475 2012 PCrLJ 1823 Lahore

476 2009 PCrLJ 1043 Lahore

477 2008 YLR 1462 Lahore

478 Ibid, 2009 YLR 1364 Karachi

479 Guidelines for Prosecutors – Khyber Pakhtunkhwa Prosecution Service

stress that this test is less strict than the one applied by Courts in al criminal cases i.e. proof of guilt beyond a reasonable doubt.

In assessing the evidence with a view to it leading to the conviction of the accused, the Prosecutor has to take care to ensure that the said evidence meets the requirements of admissibility. Any violations committed in col ecting the evidence may lead to the evidence being excluded. **This further highlights the need for Prosecutors to keep up with the investigation and to provide suggestions to the Police so that legal requirements are adhered to.** As regards admissible evidence and witnesses, the Prosecutors need to be sure that the same is not tainted and is reliable in al respects. The honesty and integrity of witnesses may become questionable by reason of them being interested witnesses or their testimony could be unreliable by reason of them being chance witnesses if their presence at the place of occurrence is not natural or explained. Moreover, any duress, temptations, motives for false implication or past history of false testimony can also diminish the credibility of a witness.

Prosecutors should endeavour to discuss the witnesses with Investigating Officers who have interacted with them during the course of investigation and who are more informed of the context and circumstances in which their evidence is given. Due weight should be given to the opinion of the Investigating Officer in deciding whether the witnesses are reliable and whether their evidence should be considered in determining whether there is a sufficient evidential basis to go forward with Prosecution.

Final y, any lines of defense open to the defendant and any plea made by the accused in his defense during investigation should also be taken into account and both inculpatory and exculpatory evidence should be appreciated in juxtaposition before determining a case fit for Prosecution or otherwise.

b) Public Interest Test – This is a public policy test which requires that the Prosecutor ought not to proceed with a Prosecution, even though it is in accordance with the law, where the public interest in favor of proceeding with Prosecution is outweighed by the public interest against proceeding. It is applied once a case passes the evidential test and irrespective of the public interest in favor of a Prosecution, if a case fails the evidence test, it wil not progress to the public interest test stage.

There are several public interest considerations which may bear upon the Prosecutor when assessing a case under this test. At times some of these

considerations wil conflict with others and in making the decision the Prosecutor has to give appropriate weight to each and in some cases one exceedingly significant factor may outweigh all other considerations and compel a Prosecutor to make a conclusion other than that which he would have but for that factor. As a general rule of thumb, the more serious an offence, the greater the public interest in prosecuting it.

Some of the most important factors and considerations to this end are the extent of harm or grievousness of injuries caused to a victim, the number of victims, age of the victim, extent of premeditation, the ulterior purpose behind the act for e.g. terrorism – causing fear & panic among the people, whether the accused is a previous offender, whether there is likelihood of repetition and so on. The Prosecutor must also have regard for factors such as the circumstances of the victim, the offender and whether Prosecution would have a positive impact in the community in terms of maintenance of law & order, deterrence of crime and boosting the community's confidence in the law.

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A Public Prosecutor in KPK or Sindh who receives a report u/s 173 Cr.P.C is competent under Section 4(b) of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005, Section 9(3) the Sindh Prosecution Service (Constitution, Functions and Powers) Act, 2009 and Section 9(5) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 to either lodge the same before the competent trial Court or to withhold the same for want of proper evidence and return it to the investigation officer with written direction to resubmit the report after removal of the deficiencies identified by him.

Furthermore, it is for the Prosecutor to determine whether to charge an accused and if so, what charges should be applied before a trial can commence. Under Section 5(b) of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005, no Prosecution may take effect against persons other than those charged as accused by the Public Prosecutor on the basis of available evidence.

X. APPLICATION FOR DISCHARGE (IN CASES OF INSUFFICIENT EVIDENCE)

If the Prosecutor is of the opinion that there is insufficiency of evidence, he can submit an application under Section 265-D of the Cr.P.C and under Section 4(c) and 5(b) of the KPPS Act 2005480, Section 9(3) of the SPS Act 2009481,

Section 6(2) (d) of the Balochistan Prosecution Service (Constitution, Functions and Powers) Act 2003 and Section 10

(3) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 apply for the discharge of the accused along with the chal an to the competent Court. However, under the powers482 cannot be exercised in respect of offences punishable with death or life imprisonment. 483

Under the KP law the discharge of the accused has been elaborated upon in further detail.

The fol owing chart elaborates upon the process for the discharge of accused in case of insufficiency of evidence.

480 Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005

481 Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009

482 supra note 45,

483 Ibid, 2018 YLR 2025 Peshawar

DPP attaches Proforma B

S. 173 Report received by

with the S.173 Report and

Public Prosecutor Fil s out

District Public Prosecutor

forwards it to the Public

the Proforma B and

Prosecutor

recommends discharge

In case of a tied opinion on a

decision to prosecute, final

Proforma B reviewed by

Proforma B reviewed by

determination made by

Investigation Officer and

District Public Prosecutor

Director Legal, Prosecution

District Head of Investigation

Department

File received by ATC

Discharge of accused with

Administrative Judge &

consent of Court before

marked to relevant ATC

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Cr.P.C.

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